SUPREME COURT OF THE UNITED STATES.

No. 50.

JACOB HOUSEMAN, CLAIMANT, &c., APPELLANT,

vs.

THE CARGO OF THE SCHOONER NORTH CAROLINA, OLIVER O'HARA, AGENT, &c., LIBELLANT.

ON APPEAL FROM THE COURT OF APPEALS OF FLORIDA.

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Pleas at the court-house in Tallahassee, before the Honorable Thomas Randall, John A. Cameron, Robert Raymond Reid, and James Webb, Judges of the Court of Appeals in and for the Territory of Florida, sitting as a court of Admiralty on the 29th day of January, 1838.

Parties Litigant.

JACOB HOUSEMAN, Appellant, *against* THE CARGO OF THE SCHOONER NORTH CAROLINA, Appellees. } Upon an appeal from a decree in Admiralty, rendered on the 14th day of September, 1833, in the Superior Court of Monroe county, Southern District of Florida.

Be it remembered, that heretofore, to wit, on the sixth day of January, 1834, came the appellant, Jacob Houseman, by Thomas Baltzell and Oscar White, his proctors, and filed with the clerk of this honorable court the following record from the court below, to wit:

Record from Court below.

THE UNITED STATES OF AMERICA,
Southern Judicial District of Florida.

Be it remembered, that on the eighteenth day of May, in the year of our Lord one thousand eight hundred and thirty-three, Oliver O'Hara, by his proctor, William R. Hackley, Esquire, filed his libel against the cargo of the schooner North Carolina, which libel is in the words and figures following, to wit:

Libel.

To the Honorable James Webb, Judge of the Superior Court for the Southern Judicial District of Florida, in Admiralty.

The libel of Oliver O'Hara, agent for Joseph and Charles Lawton, merchants of the city of Charleston, South Carolina, trading under the name and in the style of J. & C. Lawton, respectfully represents, that the said Joseph and Charles Lawton are the owners and consignees of the cargo of the schooner North Carolina, of Watterboro, Maine, George McIntire, master, consisting of cotton, in bags. That the said schooner, on a voyage from Appalachicola Bay, in the territory of Florida, to Charleston, did strike on the Florida reef, some time in March, 1833. That a part of her cargo was taken from on board of her, by the wrecking schooner Hyder Ally, Joshua B. Smith, master, which, together with the said schooner North Carolina, and the remainder of her cargo, was carried into the harbor of Indian Key, where a large portion of the said cotton is now kept and illegally detained from your Libellant.

Wherefore, he prays that the process of this honorable court may issue, taking into possession such part of the cargo of said schooner as may be found within the jurisdiction of this honorable , and that a day may be named for all persons to appear and show cause why the said cotton shall not be delivered to this Libellant.

O. O'HARA.
WM. R. HACKLEY,
Proctor for Lib.

Sworn to before me, this 18th of May, 1833.
WM. R. HACKLEY, Not. Pub.

Upon the foregoing libel the honorable the Judge made the following order, to wit:

Order of Judge.

CHAMBERS, 18 May, 1833.

Let an attachment and monition issue in this cause, and such other proceedings be had, as are usual in admiralty, returnable at the court house in Key West, on the first Monday in July next.

JAMES WEBB, Judge.

And afterwards, to wit, on the day and year last aforesaid, the following attachment issued, to wit:

Attachment.

UNITED STATES OF AMERICA,
Southern Judicial District of Florida.

To the Marshal of the United States for the said district, greeting:

We command you that you attach, seize, take, hold and safely keep, so much of the cargo of the schooner North Carolina (consisting of cotton in bags) as you may find in said district, to answer the Libel of Oliver O'Hara, agent for Joseph and Charles Lawton, merchants of Charleston, South Carolina.

And how you shall execute this precept, make known to us at the court house, at Key West, in said district, on the first Monday in July next, together with this writ.

Witness, the Honorable James Webb, Judge of our said court, this 18th day of May, 1833,

A. H. DAY, Clerk.

Upon the foregoing attachment the marshal made the following return, to wit:

Executed by attaching seventy-two bags cotton, 20 May, 1833, at Indian Key, in the hands of Jacob Houseman.

THOMAS EASTON, U. S. Marshal.

And afterwards, to wit, on the 18th day of May, and year aforesaid, the following monition issued, to wit:

Monition.

UNITED STATES OF AMERICA,
Southern Judicial District of Florida.

To the Marshal of the Superior Court of said district, greeting: Whereas William R. Hackley, Esquire, has exhibited his libel for and on behalf of Oliver O'Hara, agent for Joseph and Charles Lawton, merchants of the city of Charleston, stating, alleging, and propounding, that the said Joseph and Charles Lawton are the owners of the cargo of the schooner North Carolina, of Watterboro, Maine. That the schooner, on a voyage from Appalachicola bay, Florida, to Charleston, did strike on the Florida reef, and that part of her cargo, consisting of cotton in bags, was taken from on board of her by the wrecking schooner Hyder Ally, Joshua B. Smith, master, which, together with the said schooner North Carolina, and the remainder of her cargo, was carried into the harbour of Indian Key, where a large portion of the cotton is now kept, and illegally detained from libellant, wherefore he prays for process of court, &c.

And whereas, the Judge of said court for said district hath ordered and directed the first Monday in July next, for all persons concerned, to be cited and intimated to appear at the court house at Key West in said district, to show cause, if any, why judgment should not pass as prayed: You are, therefore, hereby authorized, empowered, and strictly enjoined peremptorily to cite and admonish all persons, whatsoever, having or pretending to have any right, title, claim, or interest, in or to said cotton, by all lawful ways, means, and methods, whereby this monition may be made most public, notorious, to be and appear at the time and place aforesaid, before the judge aforesaid, and also to attend upon every session and sessions to be held then, and from thence until a definitive sentence shall be read and promulged in said business inclusively, to have, abide by, and perform such judicial acts as the law directs; and further, to do and receive, what unto law and justice shall appertain, under the pain of the law, and contempt thereof. And whatsoever you shall do in the premises, you shall duly certify unto the judge aforesaid at the time and place aforesaid, together with these presents.

Witness the Honorable James Webb, judge of said court, this 5th day of June, 1833.

A. H. DAY, Clerk.

Upon the foregoing monition the marshal made the following return, to wit:

Executed by advertising on the doors of Mr. F. A. Brown and W. H. Shaw.

THO. EASTIN, U. S. M.
By J. A. THOURON, D. M.

To the honorable James Webb, judge of the superior court for the southern judicial district of Florida, in Chambers.

OLIVER O'HARA
vs.
SUNDRY BALES OF COTTON,
HOUSEMAN, claimant.

The petition of Jacob Houseman respectfully showeth, that sundry bales of cotton have been libelled by Oliver O'Hara, in possession of said Houseman at Indian Key, and to which your petitioner makes claim; that an attachment has been made on said cotton, and that if your petitioner is deprived of the possession of the same, he will be put to much inconvenience and expense thereby. He therefore respectfully prays, that he may be allowed to retain possession of said cotton on his entering into bond with sufficient security to abide by the decree of this honorable court, and that said bond may be entered into this 25th day of May, 1833.

CROZIER, Proctor for Claimant.

The libellant has no objection to the above application.

WM. R. HACKLEY, Proctor for Libellant.

It is agreed that the cotton levied on and attached in the within case is worth twenty-three hundred and seventy-six dollars.

KEY WEST, 25th May, 1833.

O. O'HARA, Agent.
R. C. CROZIER, Proctor for Claimant.

CHAMBERS, 25 May, 1833.

Let the within mentioned cotton be restored to the within named petitioner, upon his entering into stipulation, with good and sufficient security in the sum of twenty-three hundred and seventy-six dollars, to abide by, perform and satisfy any judgment which may be rendered in the premises, under the libel filed by O. O'Hara, agent, &c. *vs.* said cotton, and now pending in the court of the southern judicial district of Florida.

JAMES WEBB, Judge.

Know all men by these presents, that we Jacob Houseman, and Fielding A. Brown, are held and firmly bound unto Oliver O'Hara, agent for Joseph and Charles Lawton, merchants of Charleston, South Carolina, in the sum of two thousand three hundred and seventy-six dollars, to be paid unto the said Oliver O'Hara, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally, firmly, by these presents; sealed with our seals, and dated at Key West, this twenty-fifth day of May, one thousand eight hundred and thirty-three.

The condition of the above obligation is such, that whereas, seventy-two bales of cotton, part of the cargo of the schooner North Carolina,

have been libelled by Oliver O'Hara aforesaid, and attached in the possession of said Jacob Houseman, and whereas said Houseman appears as claimant to said cotton, and has on application obtained an order from the judge of the superior court for the southern judicial district of Florida, that the said cotton should be restored to his (said Houseman's) possession, on his entering into stipulation, with good and sufficient security in the above-mentioned sum of two thousand three hundred and seventy-six dollars. Now, therefore, should the said Jacob Houseman abide by, perform and satisfy any judgment which may be rendered under the libel filed by said O'Hara, agent, *vs.* said cotton, then this obligation to be void, otherwise to remain in full force and virtue.

JACOB HOUSEMAN, [SEAL.]
F. A. BROWN. [SEAL.]

Signed and sealed in presence of
WM. R. HACKLEY,
J. B. BROWNE.

And afterwards, to wit, on the first Monday in July, 1833, the honorable the superior court for the southern judicial district of Florida met at the court house in Key West, agreeable to the order on the foregoing libel, and Jacob Houseman, by his proctor, Robert C. Crozier, Esquire, filed his claim and answer to the said libel, which is in the words and figures following, to wit:

To the honorable James Webb, judge of the district court for the southern judicial district of Florida, in Admiralty.

The claim of Jacob Houseman to seventy-two bags of cotton attached under process issued from the district court for the southern judicial district of Florida, in pursuance of a libel filed by Oliver O'Hara, represented as the agent of Joseph and Charles Lawton, merchants, of Charleston, South Carolina, and the answer of said Houseman to said libel, respectfully represent: that on the twentieth day of May, of the present year, held a quiet and peaceable possession of seventy-two bags of cotton, not by force, concealment, threats, nor at the will of another, of which possession he was divested at the time mentioned aforesaid, by attachment under color of process issued from the district court for the southern judicial district of Florida.

This claimant alleges that the said process did not warrant the attachment of said bags of cotton; that it was issued pursuant to a libel filed in the court aforesaid, by Oliver O'Hara, represented as the agent of Joseph and Charles Lawton, merchants, of the city of Charleston, South Carolina; which libel did not designate, or in any manner authorize the attachment of the said bags of cotton; and that the said libel, by reason of its uncertain and insufficient allegations, did not entitle the libellant to any process, by which the said seventy-two bags of cotton could be legally attached in the possession of the said Houseman.

Your claimant further represents to this honorable court, that in consequence of said attachment, and to avoid in some measure the injury and expense that might accrue therefrom, he was compelled to secure the

immediate control and possession of the said bags of cotton, by entering into bond in the sum of two thousand three hundred and seventy-six dollars, with condition to abide by the decree of the court, in the case of the libel aforesaid.

Wherefore he prays that he be exonerated from all *obligations* entered into by bond as aforesaid, or otherwise increased in consequence of the filing of said libel, and that the claimant be allowed his costs and charges sustained in this behalf.

And the said Jacob Houseman, reserving to himself all benefit of exception to the manifest uncertainties and insufficiencies of said libel, for answer thereto, or so much thereof as is material and necessary for him to answer, says, that he does not admit that the said seventy-two bales of cotton belonged to the cargo of the North Carolina; and he further says to the allegation contained in the said libel, setting forth "that the cargo of the schooner North Carolina, consisting of cotton, in bags, together with the said schooner, were carried into the harbor of Indian Key, where, as alleged in said libel, a large portion of said cotton is kept and illegally detained from the libellant." This respondent answers, so far as it materially concerns him to answer said allegations, and says, that no portion of said cotton is, or ever has been illegally detained in his possession; and this respondent denies that a large portion, or any portion of said cotton is now, or ever has been illegally detained by any means at the place mentioned in said libel, so far as this respondent is informed, and is, or was concerned; and this respondent alleges that the said Joseph and Charles Lawton are not the owners of any cotton in his possession; and he answers further and says, that he does not know of his own knowledge that *that* the said Joseph and Charles Lawton ever were the owners of any cotton in this respondent's possession at the time of the filing of the libel aforesaid, or that was attached in pursuance of the filing thereof, in the possession of this respondent. And this, if material, he prays may be verified by the libellants.

Wherefore, he prays that the said libel, so far as it regards this respondent, be dismissed with costs.

JACOB HOUSEMAN,
ROBERT C. CROZIER, Proctor.

Sworn to before me this 2d July, 1833.
GEORGE E. WEAVER, Dep'ty Clerk.

And afterwards, to wit, on the day and year aforesaid, the following consent rule was filed, to wit:

SUPERIOR COURT,
Of the Southern District of Florida, sct.

OLIVER O'HARA, AGENT FOR J. & C. LAWTON,
vs.
CARGO OF SCHOONER NORTH CAROLINA,
JACOB HOUSEMAN, CLAIMANT.

It is ordered by consent of Adam Gordon and Wm. R. Hackley, proctors for libellant, and R. C. Crozier, proctor for claimant, that the

testimony of any person whom either of the said parties may think to be a material witness in the above named case may be taken before any judge or justice of the peace in and for Monroe county and territory of Florida, on their giving to the opposite counsel reasonable notice of the time and place of taking the same; and the testimony so as above taken shall be used in the above cause in the same manner as though the same had been taken in open court.

A. GORDON,
W. R. HACKLEY, Proctors for Libellant,
R. C. CROZIER, Proctor for Claimant.

And then on motion, said cause was continued until the fifteenth day of August next.

And afterwards, to wit: on the 15th day of August, 1833, said court met at the Court-house in Key West, when the aforesaid cause was continued until the 19th August, 1833.

And afterwards, to wit: on the 19th day of August, 1833, the said court again met at the place aforesaid, and, on motion, this cause was continued until the 20th August, 1833

And on the day and year last aforesaid, the following plea to the jurisdiction was filed, to wit:

OLIVER O'HARA, agent, &c.
vs.
CARGO OF NORTH CAROLINA. } Libel for restitution.

Jacob Houseman, claimant of seventy-two bales of cotton attached under said libel.

And the said Jacob Houseman, comes into court, here, in his proper person, and says he was bona fide the purchaser, for a valuable consideration at and upon Indian Key, in the body of the county of Monroe, in the territory of the said seventy-two bales of cotton, and being so the purchaser, he was for a long time, while at the place aforesaid, in the quiet and peaceable possession of said seventy-two bales of cotton. That whilst being so in possession of the said bales of cotton, at and upon Indian Key aforesaid, were attached by the marshal of the Southern District of Florida, to abide by the decision of the superior court for said district, in the case of the libel aforesaid. That it doth not pertain to this honorable court to hold plea of any question in this case, involving the right of property, nor at all to interfere or hold plea respecting said seventy-two bales of cotton, seized and attached as aforesaid.

Wherefore by reason of the premises he prays that said attachment be dissolved, and that said libel, so far as regards this claimant, be dismissed with costs.

JACOB HOUSEMAN.
CROZIER, Proctor.

Sworn to before me this 19th day of August, 1833.
GEORGE E. WEAVER, Dep'ty clerk.

And afterwards, to wit: on the 20th day of August, in the year aforesaid, the court again met pursuant to adjournment. And then came the parties aforesaid by their proctors aforesaid, and the case being fully argued, the court takes until the 14th day of September, to consider of its decree to be rendered in the premises. And on said day the following documents were filed as testimony in said case, to wit:

Power of attorney from J. & C. Lawton to Oliver O'Hara.

STATE OF SOUTH CAROLINA, *City of Charleston.*

Know all men by these presents, that we, J. & C. Lawton, of the city and State aforesaid, merchants, do make, constitute, and appoint, Oliver O'Hara, Esq., of Key West, our true and lawful attorney for us, and in our names, and in the name of the said firm, to object to, and all lawful ways and means to annul and set aside any supposed arbitration or award which may have been made or entered into respecting any claims for salvage on the part of any wreckers or any persons against the schooner North Carolina, Captain McIntire, master, and by all lawful ways and means, for us and in our names, to bring the matters respecting the said salvage before some court of complaint, jurisdiction for adjudication. And to do all and every other matter, act, and thing, for effecting the premises in the same manner as we might or could do if personally present, with power, an attorney or attorneys under him for that purpose, to make and substitute, and to do all lawfal acts for effecting the premises, hereby ratifying and confirming all that our said attorney, or his substitute, shall do therein by virtue thereof.

In witness whereof we have hereunto set the hands of the said firm, the thirtieth day of May, in the year of our Lord one thousand eight hundred and thirty-three.

J. & C. LAWTON,
JOSEPH LAWTON.

Signed in presence of
J. W. MITCHELL.

Be it known that on the thirtieth day of May, one thousand eight hundred and thirty-three, and in the fifty-seventh year of the independence of the United States of America, before John W. Mitchell, Esquire, justice of the quorum in and for the said State, and notary public by letters patent under the seal of the said State, duly commissioned and sworn, came Joseph Lawton, of the firm of J. & C. Lawton, above named, and acknowledged the foregoing power of attorney to be the act of said firm.

In testimony whereof, I have hereunto set my hand and affixed my [SEAL.] seal of office at Charleston, in the State of South Carolina, the day and year last mentioned.

J. W. MITCHELL, JR., Not. Pub.

Copy.

STATE OF SOUTH CAROLINA, *City of Charleston.*

We, John McNellage, John O'Neale, J. J. Frarer, and Nathaniel Fields, wardens of the port of Charleston, by request of Captain George McIn-

tire, of the schooner North Carolina, made on the 22d March, 1833, and by virtue of a warrant to us directed by the chairman of the board, did repair on board the said schooner at Kiddell's wharf, and then and there did examine and survey the hatches, which were well secured, and the cargo in good condition as far as could be seen. We likewise attended again on the 25th of March; on examination of the vessel's bottom, &c. then lying on the shore, on the bard, for that purpose, and ascertained that while on her late passage from Apalachicola, (Flo.,) to this port, she had struck on one of the Florida reefs, and from which situation she was fortunately extricated without having received any serious loss or damage. On a particular inspection of the bottom we found the gripe knocked off, and two planks amidship, on the starboard side at the turn of the bilge, slightly chafed; the rest of the bottom appeared to be in good condition, and was represented to be perfectly tight. The hause iron for the main boom and the main pall were both broke. We accordingly recommended the gripe to be properly rebolted and secured again, the plank chafed to be well examined and trimmed, and the seams in wake of the same to be tried and caulked, where necessary; a new hause iron and pall, and around the timber heads and stancheons to be tried and properly caulked, wherever found necessary. The foretop-gall't mast was found to be sprung, and the foretop-gall't sail and flying jib slightly chafed; recommended a new top-gall't mast, and the top-gall't sail and flying jib to be properly repaired. A hauser 5 inches and 65 fathoms was found to be badly chafed in many places, and which was stated to have been done in heaving the vessel off of the reef aforesaid; also, considerable of the running rigging much injured during the time the vessel was ashore; recommended a new hauser and the running rigging injured to be replaced with new in a proper manner, and which repairs, as already enumerated, are all that are considered necessary, so far as we have ascertained, to replace the said schooner in a good and sea-worthy condition, she being represented in other respects to be in fit and proper order.

Given under my hand and the seal of office the 25th of March, 1833.

JOHN O'NEALL, Chairman, [SEAL.]

I hereby further certify that the port-wardens having been requested to estimate the probable value of the said schooner North Carolina, at the time of her arrival in this port, having accordingly done so, and consider her to have been fairly worth the sum of twenty-five hundred dollars, in her then condition.

Witness my hand, the seal of office above given.

JOHN O'NEALL, Chairman.

CITY OF CHARLESTON, July 3d, 1833.

I certify that Mr. John O'Neall, chairman of the board of port-wardens, appointed by the city council, appeared before me this day and acknowledged his signature to the above survey.

THO. LEE, Dist. Judge for So. Carolina.

DISTRICT CLERK'S OFFICE, SOUTH CAROLINA DISTRICT,
Charleston July 3d, 1833.

I do certify that the honorable Thomas Lee, whose name is subscribed to the foregoing certificate, is district judge of the United States of America, for South Carolina district, and that all faith and credit are due to his acts as such.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court.

JAMES LENEY, Dist. clerk. [SEAL.]

(P) S W. J D J E. C H } Shipped in good order by William G. Porter, on board the Schooner called the North Carolina, whereof George McIntyre is master, now lying in the port of Apalachicola, and bound for Charleston, S. C. Three hundred and thirty-six bales cotton, Two bales in dispute. } one bundred and ninety of which are under deck, and one hundred and forty-six on deck, being marked and numbered as in the margin, and are to be delivered in the like order, at the port of Charleston, (dangers of the sea only excepted) unto Messrs. J. & C. Lawton, or to their assigns, he or they paying freight for the said cotton at the rate of one cent per lb. for the cotton under deck, and five-eighths of a cent for the cotton on deck, with primage and average accustomed.

In witness whereof the master of said vessel hath affirmed to four bills of lading of this tenor and date, one of which being accomplished, the other to stand void. Dated Apalachicola, 8th of March, 1833.

GEORGE McINTYRE.

Invoice of one hundred and forty bales of cotton, shipped by Wm. G. Porter on board schooner North Carolina, bound to Charleston, consigned to Messrs. J. & C. Lawton, merchants there, for sales and returns.

		lbs.	
J. D.	49 sq. bales cotton,	20,303—98—20,205 9c.	$1818 45
S. W.	63 do do do	22,070—126—21,944 9c.	1974 96
J D.	17 round do do	5519—34—5485 8½c.	466 22
J E & C H	11 do do do	4056—22—4034 9c.	363 06
	140		4,622 69

Charges: wharfage, drayage and labor, $14 20.

E. E. APALACHICOLA, March 8, 1833,

WM. G. PORTER.

Invoice of one hundred and twenty-six bales cotton, shipped by Wm. G. Porter on board schr. North Carolina, bound to Charleston, S. C., consigned to Messrs. J. & C. Lawton, merchants there, for account and risk of consignees.

(P)	B. & W. & Beauchamp & Wm.	lbs.	
	44 square bales cotton,	18,746—90—18,656 a 8c.	$1492 48
	32 do do do	13,216—62—13,154 7¾c.	1019 43
	JWA ACSA WC.		
	24 round bales cotton,	8592—48—8544 8¼	704 88
	(P) S & B		
	24 square do do	8950—48—8902 8¾	778 92
	(J D)		
	12 round do do	3798—24—3774 7⅜	278 32
	S & B (B) & L S		
	42 do do do	13,796—84—13,712 8¾	1199 80
	W B		
	10 do do do	3432—20—3412 8½	290 02
	1 do do do	398—2—396 7½	29 70
	(P)		
	3 sq. and 3 round bales do	2052—12—2040 8¼	168 30
	196		5961 85
	Charges: drayage 12 25. Storage 49 00	$ 61 25	
	Labor, 5 50, wharf. 5 70, com. 2½ p. 160 24, 160 24		221 49
			$6183 34
	E. E. Apalachicola, March 8, 1833.		
	WM. G. PORTER.		
	Your letter of 23d, with enclosures, has been rec'd.		

Apalachicola, March 9, 1833.

Messrs. J. & C. Lawton.

Dear Sir: I hand you, herewith, invoice and bill of lading for three hundred and thirty-six bales of cotton; one hundred and ninety-six bales of cotton which are purchased for you, pursuant to your order, the same amounting to $6183 34; the invoice for 140 bales as purchased on my own account, which I wish you to sell when you think it most conducive to my interest; the nett proceed you will please place to my credit.

Of the purchase on your account, 104 bales, weighing gross 41,902 lbs., are shipped under deck, and ninety-two bales weighing gross 30,947, are shipped on deck; of the shipment on my own account 54 bales weighing 18,966, are shipped on deck, and 96 bales weighing 32,942 lbs. are shipped under deck. I will thank you to have insurance effected on the

shipment I make you on my own account, with reference to this fact, and I wish the policy so made, that if any part of the deck load is lost or thrown overboard, that can be recovered, and as before stated in my letter of the 4th inst., I wish the shipment on my own account be insured for five hundred dollars more than the amount of invoice.

I enclose account current with you for the purchase of 196 bales, by which you will perceive there is a balance due me thereon, of eleven hundred and fifty-eight dollars and eighty-four cents, which I will thank you to place to my credit; you will also perceive, by statement herewith, the amount I have drawn on you for my own purchase.

I *drawn* on you yesterday at three days sight in favor Captain McIntire for six hundred dollars, and I beg you to honor the same. The North Carolina sails to day, with a favorable wind, and I hope will have a short passage.

In my letter by her you will find a detailed statement of the weights of each bale. Cotton has advanced here, and 9¾ has been paid for prime lots.

It is quite probable I may be able to purchase as far as you require, within your last limits. Cotton is now coming in freely; 250 bales will be offered to-morrow.

Yours, &c.
WM. G. PORTER.

Agreeable to the foregoing consent rule, the following testimony was taken before Ede Van Evour, Justice of the Peace for the county of Monroe, in the territory of Florida, on the 2d day of July, 1838.

Present:
W. R. HACKLEY,
A. GORDON,
Proctors for Libellant.
R. C. CROZIER,
Proctor for Claimant.

Deposition of Lemuel Otis. (*Sworn.*)

No answers recorded by questions put by claimant's proctor to this deponent.

Cross Examination.

Deponent states that he resides on Indian Key, and has resided there about nine or ten months; he was there at the time the schooner North Carolina was brought into Indian Key; he went on board; saw no other cargo on board said schooner but cotton; a part of said cargo consisting of bales of cotton, were landed on Indian Key; the number of bales he does not know; saw none of the said cotton reshipped on board of said schooner North Carolina (afterwards). Captain McIntyre informed this deponent that Wm. G. Porter, of Apalachicola, shipped said cotton on board schooner North Carolina, bound to Charleston. On examining documents, A. B. C. D. & E. recognises them to be his signature and execution.

LEMUEL OTIS.

Deposition of Pliney J. Adams. (Sworn.)

Deponent states that he has resided on Indian Key since the 26th day of January, 1833, and in the employment of Jacob Houseman. He was at Indian Key when part of the cargo of the schooner North Carolina was landed, and there were one hundred and twenty-two bales of cotton; and this deponent assisted in putting said cotton in the store-house of Captain Houseman on Indian Key; about one hundred and fifteen of these bales were brought to Indian Key by the schooner Hyder Ally, Captain J. B. Smith, which was said had lightened the schooner North Carolina so as to enable her to get off the reef—the remainder was landed from the schooner North Carolina. There were seventy-two bales of said cotton in the store-house of Captain Houseman at the time the marshal arrived at Indian Key from Key West. The marshal had access to said store-house and cotton, but does not know of his attaching it. Deponent thinks that fifty bales of the said cotton still remains in the store-house of Captain Houseman on Indian Key. Deponent on examination of papers marked F. G. H., recognized them as being witnessed by him, and that the parties signed and sealed them in his presence. Deponent says that Joshua B. Smith, Capt. of the schooner Hyder Ally, received one hundred and twenty or twenty-two bales of said cotton from Captain McIntyre, towards payment of salvage. Deponent, on examining papers marked D. & E. recognizes them as being a subscribing witness thereto, and that Lemuel Otis and Charles M. Johnson signed the same in his presence. Deponent states that he has heard, but does not know from whom, that Capt. Houseman had purchased said cotton from Capt. J. B. Smith; does not know it from his own knowledge. Deponent understood, that said cotton was sold at auction, between Capt. Houseman, Capt. Smith and Capt. Packer, the same having undivided claims, they being consorted in their business in wrecking on the Florida reef; and furthermore this deponent saith not.

PLINY J. ADAMS.

TERRITORY OF FLORIDA, *County of Monroe.*

I hereby certify that Lemuel Otis, and Pliney J. Adams, whose signatures appear to the foregoing depositions, personally appeared before me on the day and date first written, who made oath and subscribed their names thereto in my presence; and that R. C. Crozier, Esq., proctor for claimant, W. R. Hackley and A. Gordon, proctors for libellant, were present at the taking of said depositions.

In testimony whereof, I have hereunto set my hand and seal, at the city of Key West, this 14th day of August, 1833.

EDE VAN EVOUR, J. P. [SEAL.]

The deposition of Captain Charles M. Johnson, taken by consent of parties de bene esse, in the case of Oliver O'Hara, agent for J. and C. Lawton, against the cargo of the schooner North Carolina, and in behalf of said O'Hara.

Jacob Houseman, claimant of 72 bales of cotton, attached by process issuing by virtue of libel filed by O. O'Hara, agent as aforesaid. The deposition is, however, consented to, with the understanding, that the said Jacob Houseman hereby reserves to himself all rights to him, in virtue and by means of having by his proctor filed in the clerk's office an order for a subpœna to be issued for the attendance of the said Charles Johnson, to give evidence in proper person in the superior court, and with the additional understanding, that said Jacob Houseman reserves to himself all right of objection to this testimony, except that it is not given in the superior court, in proper person.

Charles M. Johnson states, that he was at Indian Key when the schooner North Carolina arrived, in March last, and her cargo was cotton, and some bales on deck. The schooner Hyder Ally arrived at the same time, and had a cargo of cotton on board, taken from the deck of the schooner North Carolina, as was alleged to have been on the Florida reef. The schooner Hyder Ally had on board over one hundred bales, the exact number not recollected. The cotton brought by the Hyder Ally was landed at Indian Key, and also some bales from on board the schooner North Carolina, all of which was stored in the storehouse of Captain Houseman at that place. Captain McIntire stated that the cotton was shipped by William G. Porter of Apalachicola, and consigned to J. and C. Lawton. Captain J. B. Smith was present in the store at the time of this conversation. Captain McIntyre attended to his business diligently, and appeared to be perfectly satisfied with the award. Captain Houseman, Captain J. B. Smith, and deponent, advised Captain McIntyre to go down to Key West; he replied that he would sooner loose his vessel and cargo first. Captain Houseman advised him to proceed to St. Augustine, as it was on his way to Charleston, his port of destination, and have the salvage settled there by the court, which he declined doing, as he wished to get into the Gulf as soon as possible, and proceed on his voyage. When the schooner North Carolina arrived at Indian Key her stern boat was very small, and the long boat was entirely unfit for use, as her seams were very open.

The award spoken of was reduced to writing; she proceeded on her voyage without any repairs. The survey was also reduced to writing. A part of her keel was off forward, and the gripe stood athwartships. This deponent thinks that it was a very deserving case of salvage.

CHARLES M. JOHNSON.

I hereby certify that Charles M. Johnson, the within named deponent, personally appeared before me on the evening of the 17th instant, and that he made oath and subscribed to the same in my presence; and that A. Gordon, proctor for libellant, R. C. Crozier and Edward Chandler, proctors for claimant, were personally present at the examination of the aforesaid deponent.

In testimony whereof, I have hereunto set my hand, and seal of the city of Key West, in the county of Monroe, and territory of Florida, on this 17th day of August, 1833.

EDE VAN EVOUR, *J. P.* [SEAL.]

And afterwards to wit, on the fourteenth day of September, in the year of our Lord one thousand eight hundred and thirty-three, the honorable the superior court for the Southern Judicial District of Florida, met at the court house at Key West, in said district, agreeable to adjournment, and the court, being fully advised of its decree to be rendered in the foregoing suit, pronounced the same in the words and figures following, to wit:

OLIVER O'HARA, Agent, &c.
vs.
72 Bales of Cotton.

This is a suit in admiralty, brought by the libellant as agent of Messrs. J. and C. Lawton, merchants, residing in the city of Charleston, South Carolina, to obtain restitution of a number of bags of cotton, of which he alleges they are owners and consignees, and which were taken from the schooner North Carolina, while on a voyage from Apalachicola in Florida, to the said city of Charleston, by one Joshua B. Smith, and carried into the harbour of Indian Key, and there illegally detained.

The marshal, under the attachment of the court, levied upon 72 bags of cotton, in the possession of Jacob Houseman, at Indian Key, and subsequently Mr. Houseman filed his claim to the cotton, his plea to the jurisdiction of this court and his demurrer to this libel.

The plea and demurrer were overruled, upon the authority of Mauro et al. *vs.* Amelia, 10 Wheaton, 473, 486, and 495; Canton *vs.* the American and Ocean Insurance Company, 1st Peter's Rep. 547, and 3d Peters, 307; McGrath *vs.* Candalers, Bee's Rep. 64; De Lovio *vs.* Boit et al., 2 Gallis, 398, and also 2 Brocir and Aden, law, page 123, 113, 114.

The claim of Mr. Houseman contains no allegation of property, except so far as it may be inferred from the allegation of possession; and the only question for the consideration of the court is, whether that possession, under the circumstances by which it was acquired, can be considered a legal one, and whether it carries with it any evidence of the property in the claimant. The facts as proved are, that Mr. William G. Porter, a merchant, residing at Apalachicola, shipped on board the schooner North Carolina, George McIntyre, master, about the last of March last, three hundred and thirty-six bags of cotton, consigned to the Messrs. Lawtons of Charleston; that one hundred and ninety-six of the bags had been purchased for and on account of the consignees, and was their property; that they were directed to sell the remaining one hundred and forty bags, and after paying insurance, freight and other charges, they were to place the nett proceeds to the credit of the consignor.

That after the vessel sailed from Apalachicola, and previous to her arrival at Charleston, there were taken from her at sea and put on board the wrecking schooner Hyder Ally, commanded by Joshua B. Smith, upwards of one hundred bales of cotton, which were carried into the harbour of Indian Key, one of the islands on the coast of Florida, accompanied by the schooner North Carolina. That, while at that harbour, all the cotton was landed from the schooner Hyder Ally, and a few additional bags from the schooner North Carolina, making altogether one hundred and twenty-two bags taken from her, the whole of which was put into the store-house

of Mr. Houseman, the claimant; and that the North Carolina then proceeded on her voyage, and arrived at Charleston with the residue of her cargo.

It does not appear by legal testimony, why any part of the cargo of the North Carolina was taken from her and put on board the schooner Hyder Ally at sea, nor what induced Capt. McIntyre to permit it to be taken to Indian Key, and there (with an additional number of bags from his own vessel) to be landed and put in store. But from the statement of the parties on their arrival at that harbour and subsequently, (as proved by some of the witnesses,) it appears that the North Carolina had run aground upon the Florida reef, and that the cotton was trans-shipped to the Hyder Ally, with a view to lighten her sufficiently to get her off, and that they then proceeded to Indian Key for the purpose of adjusting Capt. Smith's claim to salvage for the services rendered by him in getting her off.

In what way the amount to be paid as salvage was ascertained by the parties is not shown by the testimony; but after it was determined, it appears that McIntyre agreed that Smith should take a sufficient quantity of cotton, estimating it at twenty dollars per bale, to satisfy the claim, and it was in consequence of this agreement that the one hundred and twenty-two bales were landed and left at Indian Key.

It appears further that it was stated by Capt. McIntyre, and distinctly understood at Indian Key, that the cotton was shipped by Mr. Porter to the Messrs. Lawtons, and that Houseman, the claimant, was present when these transactions took place, and that he and others repeatedly advised McIntyre to go to Key West or St. Augustine, and have the salvage adjusted by the court; which he refused to do, saying that he would sooner sacrifice his vessel and cargo. Under these circumstances it is for this court to say whether or not the property of the Messrs. Lawtons, in this cotton, has been divested, and whether or not the claimant is entitled to it.

Give the case the widest and most extensive latitude, which the testimony will allow; admit all the evidence which relates to the statements and conversations of the parties respecting the causes of the transhipment at sea, and the going into the harbour at Indian Key to be legal, and yet there is nothing perceived which can effect the right of the Lawtons to this property.

It appears to me to be an act of barratry, wanton, premeditated, and undisguised, on the part of Capt. McIntyre, which in law would affect no one but himself. But suppose there was no fraud intended by him, and that though he acted badly, his conduct proceeded from ignorance of duty and not design: still such conduct, whatever the motive which induced it, could not in a court of justice be construed to deprive innocent persons of their rights. The captain or master of a vessel, ordinarily, has nothing to do with the cargo beyond its safe conveyance, and his right to detain it at the landing port for his freight. He is not the agent of the owners unless specially created such by them, or unless the agency be cast upon him by the operation of law, from extreme necessity: 2 Bro. Cir. and Aden, l. 134; Philips on Insurance, 410. In cases of unavoidable distress, it is sometimes proper that the master of a vessel should exercise a control over the cargo, which the owners have not given him, and in those cases

the law casts upon him that control. Hence it is, that when the perils of the sea require it, he is authorised to throw overboard part of the cargo to preserve the rest, or the whole to preserve the lives of his passengers and crew; and if in a strange part, beyond the reach of his owners and consignees, it becomes necessary to raise money to repair or victual his ship, or do any other act required for the prosecution and completion of the voyage in which he is engaged, it is his duty to raise it if it be possible, and not permit the voyage to be broken up and lost for the want of it, but in doing so a sale of any portion of the cargo is the last act to which he can legally resort, when all other means have failed; then and not till then has he the right to deprive the owners, by sale, of any part of the property entrusted to him for transportation alone.

He should in the first instance endeavor to get the money by drawing bills on his owners or consignees—that being the least injurious mode of obtaining it; and if uusuccessful in his efforts to procure it in that way he may resort to a bottomay on his ship, and if he fail in that he may hypothecate the cargo; and, lastly, he may sell a portion of it. 2 Brown Cir. and Adm'l, 135; Abbot on shipping, 276; Philips on Insurance, 409 to 413; 2 Ld. Raym'd, 982; 5 Esp., 65, and 1 Peters Adm'l decis., 37. But a sale of the ship or any portion of the cargo by the master, except under circumstances of such absolute imperious and unforeseen necessity as cannot be remedied in any other way, conveys no property to the vendee, in the thing sold, because the possession of the master is not such a possession as will entitle third persons to consider him as owner, or clothed with authority to sell. 2 Livermore on agency, 226; 10 East., 143 and 378; Philips on Insurance, 411, 412; 4 Camp., 138; 3 Camp., 322; 2 Camp., 42; Hughes on Insurance, 306, 307; Edwards, 118; 17 Mas. Rep., 478; Lex Mercatoria Ameri, 104, 5.

Let us apply these principles to the case now under consideration. A vessel freighted at Apalachicola and bound to Charleston, puts into the harbor of Indian Key voluntarily, for there is no pretext that either necessity or compulsion required her to go to that particular place. Her master professed to be in want of money to pay for services said to have been rendered his vessel at sea.

The value of those services do not appear to have been estimated by any competent tribunal; on the contrary, he seemed determined they should not be so estimated, for altho' entirely convenient, and repeatedly advised, he refused to go to any place where such tribunal was established. He was within a few days' sail of Charleston, and at a place by which a regular mail was passing, once a fortnight, to that city, yet he failed to correspond with his owners or consignees, or to advise them of his situation and necessities. He made no attempt to get money, either by bills upon them, or by bottomay on his vessel, or hypothecation of the goods, but sold or pretended to sell more than one-third of his cargo, and for a price estimated by himself, which was less than two-thirds of its original cost.

Under such a state of things can it be expected that this or any other court will sustain, by its judgment, a proceeding so glaringly vicious, and so injurious to the rights of others? Every reason of the law of justice

and of policy objects to it, nor has the claimant any cause to complain; for however honestly and fairly he may have acted in the business, yet if he be the purchaser he must have made the purchase with the full knowledge of all the circumstances connected with this business. He was at Indian Key (a small spot of only five or six acres) when the whole matter was transacted. He was there when the two vessels arrived, and when the North Carolina departed. His store was the place where all the consultations took place, and where all the arrangements were made. The cotton was landed on his wharf, and stored in his warehouse, and in addition to all, he appears to have been conscious of the impropriety of McIntyres conduct, and advised him to pursue a different course; his purchase, therefore, is not even protested by a want of direct notice.

In the claim there is no demand of salvage, nor is there any allegation of service rendered to the cotton, or to the schooner North Carolina, at sea or elsewhere; it appears, however, that one hundred and twenty-two bales of cotton were landed on Indian Key, and only seventy-two were attached by the marshal, the other fifty bales having been previously shipped by Mr. Houseman, as he acknowledged to the marshal at the time of making the levy. These fifty bales may have been considered by the claimant equivalent to the services rendered, and it is possible that a similar view may have been entertained by the libellant, as he had not even demanded damages, altho' he has no hope of recovering more than seventy-two, out of one hundred and twenty-two, bags of cotton. These are points, however, upon which the other is not, at this time, called upon to decide; and, therefore, considers them as undisturbed.

Something was said in argument relative to the Messrs. Lawtons not being the owners of the whole of the cotton, and there being no right in them to sue for that portion which did not belong to them. It is true they were only consignees as to one hundred and forty bags of the original shipment, but they were consignees possessing all the authority of owners, except as regarded the final disposition of the nett proceeds, arising from its sale, and those proceeds were to be paid to themselves, and applied to the credit of Mr. Porter: so far as Mr. Porter was concerned he had the right of stoppage, intrameter, until the cotton was actually received by the Messrs. Lawtons; but, until he thought proper to exercise that right, the shipping it on board at Apalachicola, for them, was a sufficient delivery to them, to give them an authority over it against the rest of the world; they were, therefore, competent to bring this or any other action in support of that authority.

Wherefore it is considered, adjudged, and decreed, by the court, that the libellant recover the seventy-two bags of cotton levied upon by the marshal in this cause, and the same be restored to him for and on behalf of the Messrs. Lawtons, merchants of Charleston, and that he also recover from the claimant his costs in this behalf expended.

JAMES WEBB, Judge.

And afterwards, to wit, on the rendition of judgment in this case, the claimant, by his proctor, entered an appeal from the decision of the court in said case, which appeal was granted by the court.

And afterwards, to wit, on the day and year last aforesaid, the following appeal bond was filed, to wit:

Know all men by these presents, that we, Jacob Houseman and Fielding A. Browne, are held and firmly bound unto Oliver O'Hara, in the just and full sum of seven hundred and fifty dollars, to be paid unto the said Oliver O'Hara, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated at Key West, this fourteenth day of September, in the year of our Lord one thousand eight hundred and thirty-three.

The condition of the above obligation is such, that whereas at a special term of the superior court for the southern district of Florida, held in the city of Key West, on this day, the said fourteenth day of September, in a suit in admiralty depending in the said court, "Entitled, Oliver O'Hara, agent of J. & C. Lawton, merchants of the city of Charleston, South Carolina, *versus* the cargo of the schooner North Carolina," and in which the above bound Jacob Houseman appeared as claimant of seventy-two bags of cotton, attached under process issued in said case, it was considered by the court that the libellant should recover the said seventy-two bales of cotton and costs, against the said schooner, from which judgment the said Jacob Houseman hath appealed to the court of appeals.

If, therefore, the said Jacob Houseman shall prosecute the said appeal with effect, or pay and satisfy the judgment aforesaid, and all such costs as shall be awarded against him in case the said judgment shall be affirmed, then this obligation to be void, otherwise to be and remain in full force and virtue. JACOB HOUSEMAN, [SEAL.]

Pr. Att'y, F. A. BROWNE.

F. A. BROWNE, [SEAL.]

UNITED STATES OF AMERICA,

Southern Judicial District of Florida.

I, Alexander Hamilton Day, clerk of the Superior Court of the United States for said district, do hereby certify, that the foregoing is a correct copy of the records of said court in the case of the libel of O. O'Hara, agent for J. and C. Lawton, against the cargo of the schooner North Carolina, as appears from the records of my office.

Given under my hand and seal of office, this twentieth day of December, eighteen hundred and thirty-three.

A. H. DAY, Clerk. [SEAL.]

And now, at this day, to wit, on the 3d day of February, 1834, came the libellant, O. O'Hara, agent, &c., by his proctor, and filed with the clerk of the court of appeals aforesaid, the following supplemental libel, to wit:

Supplemental Libel.

TERRITORY OF FLORIDA,

Court of Appeals at Tallahassee, term of January, 1834.

OLIVER O'HARA, Agent for the firm of J. and C. Lawton,
vs.
THE CARGO OF THE SCHOONER NORTH CAROLINA AND JACOB HOUSEMAN, Claimant of part of said cargo. } In Admiralty.

The supplemental libel of the said Oliver O'Hara, agent for Joseph and Charles Lawton, merchants of the city of Charleston, in South Carolina, under the firm of J. & C. Lawton, leave of this honorable court here for that purpose, according to law and the course of this court, having been first had and obtained, respectfully showeth:

That William G. Porter, merchant, of Apalachicola, in said Florida, on the eighth day of March last, at said Apalachicola, shipped three hundred and thirty-six bales of cotton on board of the schooner North Carolina, George McIntyre, master, said cotton being consigned to the said firm of J. and C. Lawton, one hundred and forty bales thereof to be sold, and the nett proceeds thereof, after deducting the freight, charges, and commissions by the said firm of J. & C. Lawton, to be placed to the credit of the said William G. Porter, and the remaining one hundred and ninety-six bales being the absolute property of the said firm.

That the said schooner, with the said George McIntyre, master, sailed under his command from said Apalachicola, for the said city of Charleston, with the said cotton on board, all in good order, on the ninth day of said March; that on the fifteenth day thereof, the said schooner, near to the small key or island on the eastern coast of said Florida, known and called Indian Key, was met by the wrecking schooner, Hyder Ally, Joshua B. Smith, master; that then and there, the said schooner Hyder Ally, under the command of Joshua B. Smith, sailed and came longside of the said schooner North Carolina, and forcibly took from her one hundred and fifteen bales of said cotton, of which the said firm of J. & C. Lawton were consignees and owners, as in this supplemental libel is above set forth; and the same, by the said Joshua B. Smith, were then and there placed on board of the said *Hyder Ally*, and the said Joshua B. Smith did then proceed with, transport and carry the said bales of cotton, thus by him taken and placed on board of the said *Hyder Ally* to said Indian Key, taking under his control at the same time the said schooner North Carolina, and causing and requiring her to proceed with him to said Key, where both of said schooners arrived together on the said fifteenth day of March, aforesaid, or early on the sixteenth day thereof, and the said Joshua B. Smith did then and there at said Key take and land from his said schooner, the said *Hyder Ally*, the said bales of cotton placed on *on* board as aforesaid, and did take and cause to be taken from the said schooner North Carolina other bales, all together amounting to one hundred and twenty-two, and did then deposite the same, and cause them to be deposited in the store or warehouse of the claimant, the said Jacob Houseman, at said Key.

And the said libellant further sheweth to this honorable court, and directly chargeth the said Jacob Houseman, that he was concerned in interest and was in copartnership with the said Joshua B. Smith and one Captain Packer, and did act and co-operate with the said Joshua B. Smith in the taking of said cotton from the said schooner North Carolina, on the high seas near the said Key, and in all the proceedings therewith, and with the said one hundred and twenty-two bales of cotton, till the same were landed and deposited in the said store or warehouse and the same were there deposited; that the said Houseman detained and converted

them to his own use, to wit, on the said sixteenth day of March, 1833, by means whereof the firm of J. & C. Lawton hath wholly lost the same; all of which doings above and herein set forth were against the will of the said Joseph and Charles Lawton, in violation of their rights and contrary to law.

And the said libellant also respectfully sheweth to this honorable court, that he understands and is informed that the said Jacob Houseman *pretends* and alleges that said cotton was taken from the said schooner North Carolina, to relieve her from the reef, known as Pickles reef, on which she had struck, or it is pretended she had struck, on said fifteenth day of March, and that the said cotton was deposited in his said store or warehouse for and on account of salvage to and for the said Joshua B. Smith, in compensation for the relief that had by him been afforded to the said schooner North Carolina at and on said reef. And that the said Houseman afterwards purchased said cotton of the said Joshua B. Smith, at said Key.

But know, the said libellant directly chargeth, that each and all of said allegations on the part of said Houseman are false and fraudulent, and for the covinous purpose of concealing the true character of the transaction, and his collusive combination with said Joshua B. Smith from its commencement; that the relief, if any afforded by the said Joshua B. Smith, was trifling and unimportant, and conferred no right in law or equity for the taking said cotton or said schooner North Carolina to said Key, or for the landing, detaining, and converting said one hundred and twenty-two bales of cotton to his own use, by the said Houseman. That the *delivery* of the same, to the said Joshua B. Smith or to the said Jacob Houseman, by the said George McIntyre, if they were in truth so delivered freely and without coercion, which by this libellant is neither admitted nor believed, and the consent of the said *George McIntyre* in any way to any of the above stated proceedings and wrong doings of said Smith or said Houseman, or to part with the control, possession, or property of said cotton, if in fact he did so consent, which is neither admitted, nor believed by this libellant, were contrary to law, without authority, and were fraudulent and barratrous, and passed no right, title, or property to the said Joshua B. Smith or to the said Houseman in and to said cotton; and the said libellant directly charges that the *pretence* of *salvage* and of the delivery of said cotton to pay and satisfy the same were altogether collusive, and intended to cover and conceal the fraud and barratry above stated.

And the said libellant also charges, that the said Jacob Houseman, the more surely to effect and perpetuate his fraudulent designs in the premises, and successively to deceive and impose upon the said *George McIntyre*, did conceal from him at the said Key, and at all other times and places, as did also the said Joshua B. Smith, the facts that he, the said Houseman, and said Smith were jointly interested in the wrecking concerns, and in the fraudulent claim and pretence of salvage against the said George McIntyre for services rendered to and for the said North Carolina and cargo; and so concealing said facts, the said George McIntyre was induced to appoint, and did actually appoint the said Houseman his agent and consignee of and for said schooner North Carolina and of her cargo, and reposing trust and confidence in him, did leave to him and

his management and direction, the interests of the said George McIntyre in said schooner and cargo, and the interests of the owners and all others concerned therein; and the said Jacob Houseman concealing his own apposing interests, and his partnership as aforesaid with said Joshua B. Smith, and in the said claim for salvage against the said McIntyre, did at said Key, on said sixteenth day of March, fraudulently accept said trust, and did falsely, as above stated, betray it, charging and receiving for his treachery a large sum of money from said McIntyre.

And the said libellant further showeth to this honorable court, and avers that the said one hundred and twenty-two bales of cotton, wrongfully taken by the said Jacob Houseman, in manner set forth in this libel, being the property of the said firm, in the aggregate weighed sixty-five thousand pounds, and altogether were of the full value of ten thousand dollars.

And the said libellant further charges, and it will fully appear by the record in this case, sent up from the honorable superior court of the southern judicial district of this territory, and the marshal of said district in the service of the attachment in this case issued from said superior court, was enabled to find and take into custody but seventy-two bales of the cotton, which, by the said Houseman, had been taken and converted to his own use as above stated; that the *remaining fifty* of the said one hundred and twenty-two bales had been, and were removed from said district, or so concealed by the said Houseman, that the same could not be attached by the said marshal, but have by the wrong doings of the said Houseman been wholly lost to and by the said firm; and the said libellant also further charges, and it will fully appear by the said record, that the said seventy-two bales of said cotton, which were attached and taken into custody by the said marshal as aforesaid, in this case, have been returned, and re-delivered to the said Houseman by an order of the honorable James Webb, judge of said superior court; said order made by the said judge upon the consent of the parties in this case, and upon the obligation in writing of the said Houseman, with surety "to abide by, perform and satisfy any judgment" which might be rendered against him by the libel filed by the libellant herein.

Wherefore, the said libellant respectfully prays this honorable court, that said Jacob Houseman, already before this honorable court of appeals, as appellant, and as claimant of said seventy-two bales of cotton, may in such manner as to this honorable court may seem meet, be required and compelled to answer to this supplemental libel.

And the said libellant also prays that this honorable court will, and do award and decree in his favor just and adequate relief in the premises; that according to the course of this honorable court, it be decreed and ordered against the said Jacob Houseman, that he pay unto the said libellant for the use of the said *firm*, the full value of the said one hundred and twenty-two bales of cotton; and, also just damages, which have arisen and have been sustained by the said firm, by reason of the wrongfully taking and conversion of the same by the said Houseman, together with all costs and expenses and fees and other charges incurred by this

libellant in prosecuting the same to final judgment; and that this honorable court will award and decree such other relief to the said libellant as the nature of the case may require, and as to this honorable court may seem just and proper.

SMITH, Proctor for Libellant.

TALLAHASSEE, 22d Jan'y, 1834.

Filed 3d February, 1834.

And now, on the same day and year aforesaid, to wit, the 3d day of February, 1834, the following answer to the foregoing supplemental libel was filed.

Answer to Supplemental Libel.

IN THE COURT OF APPEALS,
For the Territory of Florida, at January term, for 1834.

JACOB HOUSEMAN
vs.
O. O'HARA.

And for further answer in this case, the said Jacob Houseman, by Baltzell and White, his Proctors, saith, that in the month of March, 1833, on or about the 14th, the schooner North Carolina, George McIntyre, master, was wrecked on the Florida reef, and being then and there in great distress and peril, the master and crew of the wrecking schooner, Hyder Ally, commanded by Joshua B. Smith, being then in and on board the said last mentioned vessel, proceeded to render, and did render assistance to the said schooner North Carolina, her crew, tackle, apparel and furniture, and the cargo of the said vessel, consisting of a large quantity of cotton, to wit:

Bales, and other articles, were preserved and saved from total loss and destruction; that after rendering the said assistance, to wit, on or about the 16th day of March, 1833, it was agreed between the said captain of the said schooner Hyder Ally, as salvor, and the said captain of the said schooner North Carolina, as agent of the owners, to submit the question of salvage to arbitration; that it was legally and properly so submitted, and that after full and just consideration of the subject, an award was made by the arbitrators (who were properly appointed,) ordering and decreeing as the amount of salvage thirty-five per cent. upon the value of the said vessel, (the North Carolina) and the cargo, which said award was duly published to the parties to the submission, and by them acquiesced in, to wit, on or about the sixteenth of March, 1833. That after the said award was made, the captain of the said schooner North Carolina being unable to pay the salvage, awarded in money, or otherwise, except in kind, and being desirous, for the interest of all concerned, to proceed on his voyage, sold, paid over, and delivered to the said Joshua B. Smith, salvor as aforesaid, upon a just valuation thereof, the cotton in the libellant's libel mentioned, in part payment of said salvage awarded as aforesaid; that subse-

quently, on or about the day of 1833, the said Joshua B. Smith being the owner, and then in the possession of the said cotton in libellant's libel mentioned, sold and delivered the same for a good and sufficient consideration to this respondent.

And for further answer to libellant's libel, the said Houseman, by his proctors, saith, that after the said services were rendered as aforesaid by the said Hyder Ally and crew, salvors, the said George McIntyre, captain of the said schooner North Carolina, as agent of the owners of said vessel and cargo, being unable to pay the salvage, to which the said salvor, Joshua B. Smith, was entitled in money or otherwise, except in kind, (the owners of said vessel residing as they did at a great distance, to wit, in the city of Charleston, South Carolina,) and being desirous to prosecute *to prosecute* his voyage for the manifest interest of all concerned, agreed to sell, make over and deliver, and did pay, sell, make over and deliver to the said Smith in compensation, and as salvage for the services rendered to the said vessel and cargo as aforesaid, the cottonin the libellant's libel mentioned, and that the same was but a just and reasonable compensation for said services rendered as aforesaid, whereby the said Smith become the lawful owner thereof; and that afterwards, to wit, after the said sale and delivery as last aforesaid, to the said Smith, by the said McIntyre of the said cotton, and on or about the day of this respondent become the purchaser of the said cotton from the said Smith for a good and sufficient consideration, the said Smith being at the time of such sale and delivery in the possession of the said cotton as of his own property (meaning the cotton in the libellant's libel mentioned). And this respondent being ignorant, and having no notice of the claim of any third person whatever, whereby the respondent became the sole owner of said cotton, and has continued to be such lawful owner ever since; wherefore, the said Houseman claims said cotton in the libellant's libel mentioned, as owner and as his property, and prays that the same may be restored and decreed to him, and that he may have his costs in this matter sustained, and his damages sustained by the seizure of the said cotton under the libellant's libel.

Wherefore this respondent doth claim the said cotton in libellant's libel mentioned as his property, and that same may be decreed to him, and that he may have his costs in this matter sustained, and all damages by him incurred in consequence of the filing of the said libellant's libel.

BALTZELL & WHITE,
Proctors for Appellant.

Filed 3d Febr'y, 1834.

And now at a court continued and held for the court of appeals aforesaid, on the day and year aforesaid, to wit, the 3d day of February, 1834:

Order to take further Testimony.

"On motion of the libellants, leave is given to take further proof in this case.

Rule on Claimant to file answer.

And at the same term of said court continued and held on the 4th day of February, 1834, "On motion of the libellants, a rule is laid on the claimant to file an answer to the supplemental libel within ten days."

And afterwards, to wit, on the 28th February, 1834, the claimant, Houseman, filed, by his proctors, the following demurrer, to wit:

COURT OF APPEALS, January term, 1834.

HOUSEMAN
vs.
O'HARA, Agent for the Lawtons.

The said Houseman, by protestation not confessing or acknowledging all or any of the matters and things in the supplemental libel mentioned to be true, in such manner and form as the same are therein set forth as to so much of the said supplemental libel as relates to the fifty bags of cotton alleged to have been converted to the use of this respondent, and which were not levied upon by the marshal, and as to all the other cotton claimed other than the said seventy-two bales levied upon by the marshal, (and not intending hereby to waive the plea to the jurisdiction heretofore filed,) these defendants demur, and for cause of demurrer do shew, that it appears by the said libellant's own shewing in and by said bill that the said libellant hath not any claim or title, whereon a decree can be granted or made against the respondent, or any relief or assistance given to said libellant, but that the remedy of the said libellant, if any he has, is in a court of common law. And therefore, and for other causes of demurrer in said bill appearing of the complainant's own shewing, this respondent demurs to the said bill, and demands the judgment of this court, whether he ought to be compelled to make any other or further answer thereto, and prays to be hence dismissed.

CHANDLER,
BALTZELL,
WHITE,
Proctors for Respondent.

Filed 28th February, 1834.
[Endorsed,] "Not filed in time, and objected to by Smith."

And also on the day and year last aforesaid, to wit, the 28th day of February, 1834, the claimant, by his proctors, filed the following answer to the supplemental libel, to wit:

COURT OF APPEALS, January term, 1834.

OLIVER O'HARA
vs.
JACOB HOUSEMAN, Claimant of 72 bales of Cotton attached.

For answer to such part of the supplemental libel filed in the above case by leave of the said court, as is not covered by his demurrer, and as

is deemed material for him to reply to, said claimant shews that the schooner North Carolina, commanded by one George McIntyre, and laden with a cargo of cotton in bales, ran ashore on a dangerous part of the Florida reef on about the 15th day of March, 1833, and by so doing sustained much damage and injury, and incurred much risk of the loss of both vessel and cargo. That after having sustained injury, and while vessel and cargo were both still much exposed to peril, one Joshua B. Smith, commanding a regularly licensed wrecking vessel, called the schooner Hyder Ally, tendered his own and his crews' assistance in the said schooner Hyder Ally to the said George McIntyre, towards relieving the said schooner North Carolina from his dangerous situation on the reef, by taking out (which was absolutely necessary to be done and could not have been done by the company of the North Carolina unaided) so much of her cargo as that the said schooner North Carolina would be lightened sufficiently to float with the balance of her cargo on board; that this proffer of assistance was immediately accepted by the said George McIntyre; and the said Joshua B. Smith, with his said crew, commenced working by *breaking* out cargo from the deck of the North Carolina and placing it on board the Hyder Ally, to the amount of sundry bales of cotton, and by this means succeeded in getting the North Carolina, with her remaining cargo, again afloat, after encountering, for that purpose, much hazard, damage, and property, great labor, and loss of time; that from the consideration of the vicinity of Indian Key, its being on the immediate and direct route to the port of Key West, and at the earnest solicitation of the said George McIntyre, the said Joshua B. Smith was induced, altho' reluctantly, to carry to Indian Key so much of the cargo aforesaid as he had received in his said vessel, whither also followed also the schooner North Carolina, and the balance of the cargo; that after having arrived at Indian Key, aforesaid, the said George McIntyre requested the advice of this claimant in what manner it was most proper to remunerate the salvors, and was urgently persuaded by the claimant, by the said Joshua B. Smith, and others there, to proceed either to Key West, St. Augustine, or Charleston, for the purpose of having the quantum of salvage to be paid to the salvors settled by the court of Admiralty.

That this course, however, so recommended by said Smith, your claimant, and others, was strenuously opposed by said McIntire, stating it to be all-important to have the question adjusted as speedily as possible, that so he might proceed on his intended voyage. That the said Smith was obliged to yield to the said McIntyre; and being strongly and at divers times urged thereto, did agree at last, (finding it in vain any longer to contend, and believing that the said McIntyre was capable of discharging his duty properly, and so disposed to do,) that the quantum of salvage due to the said Joseph B. Smith, his crew and vessel aforesaid, should be submitted to the award, decision, and arbitrament of two indifferent arbitrators, to be mutually chosen and appointed by the said George McIntyre and Joshua B. Smith, who were accordingly then and there so chosen and appointed, and after having all the facts and circumstances proved on either side, and award the amount of thirty five per cent. upon the whole value (which had been duly and fairly appraised) of both vessel and cargo,

to be paid to the said Joshua B. Smith, for his services above recited, with those of his aforesaid crew and vessel, which sum your respondent is advised is not greater than the said Smith was justly entitled to for his services to said vessel; that subsequent to said award being made and published, the said George McIntyre declared his inability to pay all the salvage in money, whereupon it was consented by the salvors to receive from the said McIntyre a satisfaction of the award in kind; and accordingly, sundry bales of cotton, appraised as aforesaid, and received by the said Smith, and delivered over to him by the said McIntyre, in full satisfaction and liquidation of all claims for salvage as aforesaid, which said sundry bales of cotton were afterwards, at the particular request of said Smith, safely stored in the warehouse of this respondent at said Key; that after having remained in said warehouse for a long time as the property of said Smith and those concerned with him, the said Smith proposed and agreed to sell, and did according sell unto this claimant fairly, and for a full consideration, the said cotton, so stowed, and for which, for a long time after such sale to your claimant, remained in the claimant's quiet, peaceable, and uninterrupted possession. In this manner, and not in that alleged in the supplemental libel, was the property of said cotton acquired, not collusively or thro' fraud, as far as this respondent is concerned, and so far, likewise, as he believes the said Smith is concerned, but fairly and for a good consideration.

And this claimant further shews, that at no time did he act in the premises under concealment, covin or collusion, nor has he ever betrayed trust as charged in the supplemental libel; that if he ever did receive money from said McIntyre (which he does not admit) it did not amount to more than the sum usually charged and received by merchants doing business, as this respondent then and there was at Indian Key aforesaid.

He denies that the taking said schooner and cargo to Indian Key was thro' the collusive conduct of said Smith, or this claimant, but as already stated, the said captain was advised and entreated to go to Key West, or St. Augustine, or Charleston, but having refused most positively, it was not in the power of said Smith or of others, as this respondent is advised, to coerce him. His going to Indian Key was his own choice, and to have refused to go there by said Smith would have been to surrender the wages to which he and his crew justly entitled.

This respondent does not admit the right and interest of the said libellants, in and to the bales of cotton levied upon by the marshal, nor does he admit their right to question his disposition of the remaining bales, which he insists to have been fairly and honestly disposed of, and were purchased by him for a fair price, and under the confident belief that he was acquiring property free from any doubt of title.

This respondent denies any combination between him and said Smith to impose upon said McIntyre, or that he owned any part of the vessel, the Hyder Ally, or had any control, in any shape, over her.

He says that the value of the cotton is not so great as that alleged in the supplemental libel, and believes the estimate of the appraisers to be fair and reasonable.

Wherefore the said respondent prays that the claim of the said libel-

lants in their original and supplemental libels be dismissed, and the claim of this respondent to the said property, under the award aforesaid, be sustained, and that his costs be decreed to him, and such damages for the illegal seizure of said cotton may be awarded to him as the court may seem right.

CHANDLER & BALTZELL & WHITE, [L. S.]
Proctors for Appellant.

Filed 28th February, 1834.

I agree that this answer be filed as of this day.

JOS. L. SMITH,
Proctor for Libellant.

TALLAHASSEE, 27th February, 1834.

Amended claim of Appellant.

And on the same day, to wit, on the 28th day of February, 1834, came the appellant, by his proctors, and filed the following amended claim, to wit:

IN THE COURT OF APPEALS, January term, 1834.

JACOB HOUSEMAN
vs.
O. O'HARA.

For further answer in this behalf the said Jacob Houseman, by Chandler and Baltzell and White, his proctors, saith, that on or about the fourteenth of the month of March, in the year 1833, the schooner North Carolina, George McIntyre, master, was wrecked on the Florida reef, and being then and there in great distress and peril, the master and crew of the wrecking schooner Hayder Ali, commanded by John B. Smith, being then in and on board the said last mentioned vessel, proceeded to render, and did render, assistance to the said schooner North Carolina, being then and there in great distress and peril, as aforesaid, by which assistance and service there rendered, the said schooner North Carolina, her cargo, tackle, apparel, and furniture, and the cargo of the said vessel consisting of a large quantity of cotton, to wit, bales, were preserved and saved from total loss and destruction. That after rendering said assistance, to wit, on or about the sixteenth day of March, 1833, at the request and solicitation of the said Smith, it was agreed between the said captain of the said schooner Hyder Ali as salvor, and the said captain of the said schooner North Carolina, as agent of the owners, to submit the question of salvage to arbitration; that it was legally and properly so submitted; and that after full and just consideration of the subject, an award was made by the arbitrators (who were properly appointed) ordering and decreeing, as the amount of the salvage, thirty-five per cent. upon the value of the said vessel (the North Carolina) and her cargo, which said award was duly published to the parties to the submission, and by them acquiesced in, to wit, on or about the 16th March, 1833.

That after the said award was made, the captain of the said schooner North Carolina, being unable to pay the salvage awarded in money or otherwise, except in kind, and being desirous for the interest of all concerned to proceed on his voyage, sold, paid over, and delivered to the said Joshua B. Smith, salvor as aforesaid, upon a just valuation thereof, the cotton in the libellant's libel mentioned in part payment of said salvage awarded as aforesaid.

That subsequently, on or about the day of 1833, the said Joshua B. Smith, being the owner, and then in the possession of the said cotton in libellant's libel mentioned, sold and delivered the same for a good and sufficient consideration to this respondent.

And for further answer to libellant's libel, the said Houseman, by his said proctors, says, that after the said award was rendered and published as aforesaid, (services were rendered as aforesaid by the said Hyder Ali and crew,) the said George McIntire, captain of the said schooner North Carolina, as agent of the owners of said vessel and cargo, being unable to pay the salvage to which the said salvor, Joshua B. Smith, was entitled in money or otherwise, except in kind, (the owners of said vessel residing as they did at a great distance, to wit, in the city of Charleston, South Carolina,) and being desirous to prosecute his voyage for the manifest interest of all concerned, agreed to pay, sell, make over, and deliver, and did pay, sell, over, and deliver to the said Smith, in compensation and as salvage for the service rendered to the said vessel and cargo as aforesaid, the cotton in the libellant's libel mentioned, and that the same was but a just and reasonable compensation for said services rendered as aforesaid, whereby the said Smith became the lawful owner thereof; and that afterwards, to wit, after the said sale and delivery last as aforesaid, to the said Smith by the said McIntyre of the said cotton, and on or about the day of this respondent became the purchaser of the said cotton from the said Smith, for a good and sufficient consideration, the said Smith being at the time of the said sale and delivery in the possession of the said cotton, as of his own property, (meaning the cotton in the libellant's libel mentioned,) and this respondent being ignorant, and having no notice of the claim, of any third person whatever, whereby this respondent became the lawful owner of the said cotton, and has continued to be such lawful owner ever since.

Wherefore the said Houseman claims said cotton in the libellant's libel mentioned, as owner and as his property, and prays that the same may be restored and decreed to him, and that he may have his costs in this matter sustained, and his damages sustained, by the seizure of the cotton, and all damages by him sustained, in consequence of the filing of said libellant's libel.

BALTZELL & WHITE,
Proctors for Appellant.

Filed 28th February, 1834.

I agree that this amended claim may be filed this day.

JOS. L. SMITH,
Proctor for Libellant.

Tallahassee, 27th February, 1834.

Corrected, on motion, by striking out the words "award was rendered and published as afs'd," interlined on the 2d page, in 2d court, leave of the court being given.

And afterwards, to wit, on the 15th day of February, 1836, came the libellant by his proctor, and filed the following replication:

Replication of Libellant.

COURT OF APPEALS, TALLAHASSEE, Term of January, 1835.

OLIVER O'HARA, Agent, &c.
vs.
JACOB HOUSEMAN, Respondent, &c. } In Admiralty.

The replication of the said Oliver O'Hara, agent, &c., to the answer, and the further answer of the said Jacob Houseman, respondent, to the supplemental libel filed herein, humbly sheweth:

That your libellant, saving and reserving to himself all and all manner of advantage and exceptions to the manifest imperfections and insufficiencies in the said respondent's answer, and further answer, contained, for reply thereto, or so much thereof as it is necessary and material for the libellant to make reply to, says, that the said several matters by him set forth and alleged in his said supplemental libel, are true in matter and form as set forth and alleged, and that they are true and sufficient in law.

He further replies and says, that each and every allegation set forth and contained in said respondent's answer, and further answer, in contradiction of, or inconsistent with, the allegations and matters in his said supplemental libel alleged, are untrue, and are positively denied by the said libellant.

That each and all the matters set forth in said answer, and further answer, as to the danger and hazardous situation of said schooner North Carolina, and of her cargo, of service rendered to her, and to said cargo, by Joshua B. Smith, master of the said wrecking schooner Hyder Ali, or by his crew, or the necessity of such service, or of aid, from any but the master and crew of said schooner North Carolina, are wholly untrue, and positively denied by the libellant. The said libellant also denies all that is alleged in the said answer, and further answer, as to an award for salvage, or as to the voluntary selling, paying over, and delivery of the bales of cotton in said answer, and further answer, mentioned by the said Captain George McIntyre to the said Joshua B. Smith, or to any person. He further denies that said George McIntyre voluntarily and freely and without coercion, proceeded to said Indian Key with his said schooner North Carolina and her cargo.

And the libellant further says, that if the said George McIntyre did sell, pay over and deliver said 122 bales of cotton, part of the cargo of the schooner North Carolina, and the property of the said firm of J. & C. Lawton, he did so without lawful right, wrongfully and barratrously.

And that the said Joshua B. Smith, and the said respondent, in taking the said bales on the high seas from said George McIntyre, as in truth they did, in carrying them to Indian Key, and in converting them to their own use, and to the use of the said Jacob Houseman, were guilty of a tort, gained no right or title to the said cotton, but are, (the same notwithstanding) in this court, accountable for the full value of said cotton, and for damages unto the said firm of J. & C. Lawton, to be recovered in this suit for them by the said libellant according to law and the course of this court in admiralty.

And your libellant further says, that the said cotton was of the full value alleged and set forth in said supplemental libel. That it was the property of the said firm of J. & C. Lawton, as herein set forth; that it was tortiously taken by said Jacob Houseman on the high seas and at Indian Key, in connexion with said Joshua B. Smith, and converted to his use as in said supplemental libel is set forth.

That the number of bales so taken was at least one hundred and twenty-two, weighing sixty-five thousand pounds, and of the full value of ten thousand dollars.

And your said libellant further saith, that if said schooner North Carolina had in fact and truth run upon the Florida reef, been in danger therefrom, and been in some manner assisted and relieved from it by the said Joshua B. Smith, of the Hyder Ali, and by his crew, which, however, is not believed, but is denied by this libellant, that his, the said Joshua B. Smith's wrongful conduct in connexion with said respondent, and the said respondent's wrongful conduct, and the unfairness, covin and deception practised by both of them, as set forth and alleged in said supplemental libel and in this replication, would forever have barred and extinguished the right of both or either of them to salvage from the said George McIntyre, or to any claim therefor against the said schooner North Carolina, or her said cargo, or against the owner or owners of said cargo; and the said conduct of the said Joshua B. Smith and of the said respondent, in taking said cotton without resorting to any judicial tribunal to decide upon their claims, their false pretence of urging said George McIntyre to proceed to Key West, or to St. Augustine, or to Charleston, there to have the question of salvage legally and properly determined, evidently a mere false pretence to disguise their wrongful intentions and actions, the fraudulent concealment of the fact that said Jacob Houseman and Joshua B. Smith were in partnership as to this very claim for salvage, and the deceit practised by said Jacob Houseman, in acting as agent, and adviser, and consignee of said George McIntyre in this whole transaction, and of said Joshua B. Smith in uniting in, and permitting and availing himself of this deception, and the finally taking by said Jacob Houseman and Joshua B. Smith, as the successful result of their fraud and deceit, of at least $10,000 worth of the cargo, more than ten times the value and merit of the services rendered, if any in fact were rendered; and a further large sum of money from the said George McIntyre by said Jacob Houseman, as commissions for the business so deceitfully done by him as such agent, adviser, and consignee, prove beyond concealment, that their object throughout was plunder, by obtaining the wrongful possession of property,

which they knew belonged to the said firm of J. & C. Lawton, and *not salvage.*

And the said libellant further saith, that any and every other matter and thing in the said respondent's answer, and further answer, not in this replication herein above replied to and confessed, and avoided or denied to be true, which is certain, material, or effectual in law, to be replied to, is now by said libellant denied, and declared to be untrue. Wherefore, the said libellant, as in said supplemental libel, prays for adequate, just, and full relief in the premises; and especially, that according to the course of this honorable court, it may be decreed and ordered, that the said respondent do pay unto this libellant to and for the use of the said firm of J. & C. Lawton, the full value of said cotton at the time it was taken by said respondent, and all damages at least equal to the legal rate of interest, which have accrued to the said firm by reason of the said wrongful taking of said cotton, together with all costs, expenses, fees, and other charges incurred, or which may be incurred by this libellant in prosecuting the said claim to final judgment. And, finally, that this honorable court will award and decree such other relief to and for the said libellant as the nature of the case may require, and as to this court may seem just and proper.

By SMITH, Proctor for Libellant.

TALLAHASSEE, 1835.

Filed 15th February, 1836.

TERRITORY OF FLORIDA,
Southern Judicial District, Monroe County, ss.

Whereas, Jacob Houseman hath prayed an appeal to the court of appeals for said territory, from a certain decree in admiralty, rendered by Hon. James Webb, judge of the said district, wherein Oliver O'Hara, agent and attorney of Charles and Joseph Lawton, merchants, &c., was libellant, *vs.* the cargo of the schooner North Carolina, and Jacob Houseman, claimant of same; and whereas, it is desirable to have the testimony of divers witnesses to be read in evidence before the said court of appeals on the final trial of the said cause; now, therefore, it is hereby stipulated and agreed by and between the said Jacob Houseman and the said Oliver O'Hara, agent, &c. that the testimony of such witnesses as each party may designate as material in his behalf, may be taken in the form of depositions before any justice of the peace, notary public, or the clerk of the superior court for said county, by giving twelve hours' notice of the time and place of taking the same to the attorneys of the respective opposite parties, at any time between the date hereof and the 25th day of December next, to wit: Notice shall be given to Edward Chandler, Esq., as attorney of the said Houseman, and to Wm. R. Hackley, Esq., or A. Gordon, Esq., as attorneys of the said O'Hara. And it is further agreed, that the depositions of witnesses thus taken shall be read as evidence in behalf of the respective parties at the trial of the said appeal before the court of appeals at Tallahassee.

In testimony whereof, we, the said Jacob Housman and the said Oliver O'Hara, agent, &c., have hereunto set our hands, and affixed our seals at Key West, in the district and county aforesaid, this the 14th day of November, 1833.

JACOB HOUSMAN, [SEAL.]
O. O'HARA. [SEAL.]

Witness: P. J. FONTANE,
A. PATTERSON.

COURT OF APPEALS, January term, 1834.

O'HARA, agent, &c.
vs.
72 bales of cotton, HOUSMAN, claimant.

Notice to produce Award.

The libellant is required to produce, on the trial aforesaid, the original award made by Charles M. Johnson and Lemuel Otis, related, to settle, adjust, and arbitrate the amount of salvage claimed for services rendered the schooner North Carolina, by Captain Smith, of the Hyder Ali, said submission having been made by Captain McIntyre, master of the schooner North Carolina, and by said Smith, captain of the Hyder Ali.

CHANDLER, BALTZELL & WHITE.

I acknowledge a copy of the within notice this day, 28th February, 1834. JOS. L. SMITH, Pr. for Libellant.

And at another day, to wit, on the 6th day of January, 1834, the following testimony was filed.

Testimony.

OLIVER O'HARA, Agent, &c.
vs.
CARGO OF SCHOONER NORTH CAROLINA. } Libel for restitution.

Jacob Houseman, claimant of seventy-two bags of cotton, seized under said libel as being a part of said cargo.

Judgment in the superior court of South Florida in favor of the libellant, and condemning the said seventy-two bales of cotton. On which judgment an appeal was taken, and the said Oliver O'Hara and the said Jacob Housman agreed to take the depositions out of court before A. H. Day, Esquire, clerk of said court, to be used as evidence in the court of appeals of the Territory of Florida on the trial of said case of appeal; and

[Deposition of Lemuel Otis.]

first, Lemuel Otis, sworn, in the presence and with the consent of the attorneys on either side, deposes and says, that some time in the month of March, 1833, the schooner North Caro-

lina, Captain McIntyre, came into the port of Indian Key. Captain McIntyre said he had been ashore on the Florida reef; that he had two heavy chain anchors and was not able to carry out an anchor to get the vessel off, and that he was relieved by the schooner Hyder Ali, Captain Smith. Captain McIntyre stated to the deponent that his own boats were not in a situation to carry out the chains and anchors. Capt. McIntyre told deponent that if it had not been for the assistance rendered by Captain Smith of the Hyder Ali, he could not have got his vessel off the reef. Capt. Smith several times proposed to Captain McIntyre to go to Key West or to St. Augustine to have the salvage settled, which Captain McIntyre positively declined doing. Captain Smith said he would not settle by arbitration unless Capt. McIntyre would give him a certificate that it was his wish to have it settled in that way. A certificate was accordingly given, and the arbitrators were in consequence chosen by the parties. The deponent was appointed one of the arbitrators, and said arbitrators made an award which he does not now recollect.

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After the award of the arbitrators had been made, Capt. Smith offered to Capt. McIntyre to go to St. Augustine or to Key West and have the case settled by a court of admiralty.

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The Captain of the Hyder Ally was Joshua B. Smith. In paying his salvage Capt. McIntyre disposed of nearly all his deck load. The North Carolina brought into Indian Key cotton upon her deck, her deck load not having all been taken on board the Hyder Ally. In addition to the car-

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Said cotton was pointed out to witness by Jacob Houseman, as part of the cargo of schooner North Carolina. That said Houseman told him (witness) that fifty bales of cotton of the cargo of the schooner North Carolina had been taken from Indian Key.

Cross Interrogatories.

Jacob Houseman did not state by whom said 50 bales of cotton were taken from Indian Key.

THOMAS EASTIN.

F. A. Browne.

Fielding A. Browne, sworn, saith: He was the agent of Jacob Houseman and his vessels, and that the sloop Sarah Isabella, belonging to said Houseman, was consorted with the schooner Hyder Ally, commanded by Captain Smith, at the time the schooner North Carolina got ashore on the Florida reef. And said Houseman received the proportion of the Sarah Isabella in the salvage on the said schooner North Carolina and cargo.

Cross examined by appellant's attorney, says, he paid to Capt. Smith and Captain Packen, of the sloop Brilliant, which were consorted with the Hyder Ally, as the agent of Captain Houseman, a certain sum of money for a quantity of cotton purchased from them by Capt. Houseman. Said cotton was represented to him by both parties as a part of the cargo of the schooner North Carolina which had been ashore on the Florida reef. Witness was present at the time of the trial of said case in the superior court for this district, and by consent of parties attorneys gave evidence to the court of a part of the contents of a letter which he had received from William G. Porter, of Apalachicola, in which said Porter stated, that that part of the cargo of the schooner North Carolina belonging to him was fully insured, and that he (said Porter) had therefore been no loser that transaction *transaction* (alluding to the wreck of the schooner North Carolina.) At the time the deponent gave this evidence in court as to a part of the contents of the letter of William G. Porter, he testified orally and did not produce the letter in question; this also was by consent of parties.

F. A. BROWNE.

DECEMBER 5th, 1833.

Ira Gould.

Ira Gould sworn, saith: On or about the 15th March, 1833, witness was mate of the schooner Hyder Ally. On that morning, discovered the schooner North Carolina, McIntyre, master, ashore Pickles reef, about 95 miles from Key West. The North Carolina lay in six feet of water, and she drew eight feet. It was at this time nearly low water. The North Carolina was laden with cotton, and had a deck load of three tier. The Hyder Ally, Capt. Joshua B. Smith, relieved said schooner North Carolina, and carried her to Indian Key. During the

time the Hyder Ally was alongside of the North Carolina (taking out cargo) she, the Hyder Ally, struck several times upon the reef very heavily on account of the swell. The weather was moderate. In about two hours after the North Carolina was gotten off, it came on to blow very fresh from the eastward. It continued fresh during the night, but the following day it was more moderate. Pickles reef is generally considered a dangerous reef, by persons acquainted with said reef. Witness thinks, from the knowledge he had of the reef and the succeeding weather, that the schooner North Carolina would have bilged that night, had she not been relieved. From the deck of the N. C. the Hyder Ally took 110 bales of cotton, and carried it to Indian Key. The salvage to the schooner Hyder Ally upon the schooner N. C. and cargo was decided by arbitration at Indian Key. Witness was present at the time of the arbitration. Capt. Johnson and Capt. Otis were the arbitrators, and witness thinks the court (under the circumstances) would not have given less than 30 per cent. upon the vessel and cargo, according to its usual decisions. The North Carolina struck at 12 o'clock at night, and was got off at 4 o'clock the following afternoon. Witness does not know what damage the N. C. sustained whilst on the reef, but that she had lost her gripe. The arbitrators were mutually chosen, and perfectly voluntarily on the part of Capt. McIntyre. The salvage was paid in kind in square and round bales. Witness supposes the North Carolina was worth three thousand dollars—that the cargo was worth $25 per bale. Witness is not at this time any way interested in the event of this suit. The N. C. had two boats, the large one was leaky. The N. C. was about 20 miles from the nearest inhabited land; the small boat was not a suitable one in which to save the cargo of the schooner. The schooner was about 5 miles from the nearest inhabited land; said land was about N. west from the schooner; there were two tides in twenty-four hours on the reef. As a seaman, the witness believes that if the N. Carolina had not been relieved by the wreckers, she would have bilged the succeeding night.

IRA GOULD.

DECEMBER 14th, 1833.

C. M. Johnson.

Charles M. Johnson being duly sworn, saith: he was at Indian Key when the schooner North Carolina arrived there, commanded by George McIntyre, in March last, with a cargo of cotton, part of which was on deck. The schooner Hyder Ally, Capt. J. B. Smith, arrived there at the same time, and had a cargo of cotton on board, all of which was taken from the deck of the schooner North Carolina; which schooner was said by Capt. McIntyre, and other persons, to have been on the Florida reef; the schooner Hyder Ally had on board one hundred and twelve bales of cotton, which was landed at Indian Key; some bales were also landed there from the schooner N. Carolina; all the cotton was put into Jacob Houseman's ware-house; the cotton was upland cotton, and such as witness had generally seen sell at Key West for between seven and nine cents;

the bales weighed from 380 to 400 each, excepting about 42 bales, which weighed about 500 pounds. Witness and Captain Otis appraised the schooner North Carolina and cargo. The vessel and cargo were valued at a little over nine thousand dollars. The weather had been blowing heavily from the eastward for several days previously to the arrival of the schooner North Carolina at Indian Key. At the time she was on the reef there was a heavy sea. The salvage claimed by Capt. Smith was determined by arbitration, and over 30 per cent. was awarded on vessel and cargo. The arbitrators were sworn by a justice of the peace. Witness was the arbitrator on behalf of Captain McIntyre. Captain McIntyre attended to the business diligently, and appeared to be perfectly satisfied with the award, and so expressed himself as he was leaving the wharf.

Cross Interrogatories.

Witness thinks the appraisement was made in writing; the award was made in writing. Capt. McIntyre took money off with him—a 28lb. shot bag about half full; witness does not know whether the bag contained dollars or doubloons. That Capt. McIntyre remarked that it was a damned pretty business; that he did not carry off more than half the money he brought on shore. There was not more than one man on Indian Key who could have advanced money to pay the salvage on the North Carolina and cargo, and that man was Jacob Housman. Witness never knew a case of salvage settled at Indian Key before. Witness has been thirteen years on the Florida reef. Witness, Capt. Smith, and Capt. Houseman offered to pilot the schooner to Key West, and Capt. McIntyre said he would rather loose vessel and cargo than go either to Key West or St. Augustine. The North Carolina could have sailed to Key West in ten or twelve hours.

Rebutting testimony on part of Appellant's Counsel.

Capt. McIntyre remained at Indian Key between two and three days, and was a shrewd calculating man, and a perfectly sober man.

CHARLES M. JOHNSON.

TERRITORY OF FLORIDA, County of Monroe.

I, Alexander Hamilton Day, do hereby certify, that on the days and year aforesaid, personally appeared before me, Lemuel Otis, Wm. H. Fletcher, Silas Fletcher, Thomas Eastin, F. A. Browne, Ira Gould, and Charles M. Johnson, who, being duly sworn, said that the foregoing was true and correct, to the best of their knowledge and belief; and I further certify that at the time said testimony was taken, Edward Chandler, proctor for claimant, and A. Gordon (or Wm. R. Hackley,) proctors for libellant, were present.

[SEAL.] Given under my hand and seal this twentieth day of December, 1833.

A. H. DAY, Commissioner.

Filed, 6th January, 1834.

Opened by consent in open court, 13th January, 1834, subject to any exceptions from either side to which it may be properly and legally liable.
Test: JAS. S. LINN, Clerk.

Commission to take deposition.

TERRITORY OF FLORIDA, Court of Appeals.

By his honor Thomas Randall, presiding judge of the Court of [SEAL.] Appeals for the Territory aforesaid, to John W. Mitchell, Hugh P. Dawes, and Otis Mills, greeting:

Whereas, there is a certain controversy now depending in said court, between Oliver O'Hara, agent for the firm of J. and C. Lawton and the cargo of the schooner North Carolina, and Jacob Housman, claimant of part of said cargo; and whereas, William Naylor and Joseph Tyler are material witnesses in said matter of controversy, and cannot attend our said court in person, without manifest inconvenience:

Now know ye, that we, reposing special trust and confidence in your prudence and fidelity, have appointed you, and you or any two of you are hereby authorised and required to cause the said William Naylor and Joseph Tyler personally to come before you, and after being duly sworn, to examine them concerning the said matter of controversy, agreeably to the interrogatories hereunto annexed; and the answer to the same being plainly and distinctly written, you are to send the same closed up under your hands and seals to our said court, to be held on the first Monday of January next, together with this writ. Witness, James S. Linn, clerk of our said court, this 28th day of February, A. D. 1834, and of the Independence of the United States the fifty-eighth year.

JAMES S. LINN, Clerk.

The execution of this commission appears in the schedule hereto annexed.

JOHN W. MITCHELL, Comr. [L. S.]
H. P. DAWES, Comr. [L. S.]

Instructions to the Commissioners.

Before proceeding to take the examination of the witnesses, the commissioners must respectively make oath or solemn affirmation that they will faithfully execute the commission in the case herein named; and two of the commissioners may act under the commission. They must then take the oath or solemn affirmation of each witness separately, that he will well and truly answer the interrogatories that shall be put to him by the commissioners.

The commissioners will then proceed to take down in writing the answers of each of the witnesses to each and every part of each interrogatory; and they are requested to be careful that no part of any interrogatory remain unanswered, and the answers of each witness must be signed by him.

When all the testimony is taken the commissioners must write at the bottom thus: "We whose names are hereunto subscribed, commissioners named in the commission hereunto annexed, *do certify*, that after being sworn ourselves, we did examine the witnesses named in the said commission, under oath; and their answers to the interrogatories annexed to said commission are truly and correctly herein set forth."

After which the commissioners must attach all the papers together, fold them all up and seal the packet with several seals, and then direct it to James S. Linn, Esquire, Clerk of the Court of Appeals of the Territory of Florida, at Tallahassee; and write on the back also, at the left corner, the title of the suit as mentioned at the head of the interrogatories. The packet may then be put into the post office by one of the commissioners, and a receipt for the same, *endorsed on the packet*, must be given by the post master or his deputy, thus: "Received from [naming the commissioner,] one of the commissioners, to be forwarded by due course of mail."

Tallahassee, 28th day of February, 1834.

JOS. L. SMITH, Proctor for Libellant.

COURT OF APPEALS, TALLAHASSEE, FLORIDA,
Term of January, 1834.

OLIVER O'HARA, Agent for the firm of J. and C. LAWTON,
vs.
The cargo of the schooner North Carolina and JACOB HOUSMAN, claimant of part of said cargo.
} In Admiralty.

Interrogatories to be put to William Naylor of Charleston, South Carolina, and to Joseph Tyler of the same Charleston, to be put and propounded to each, distinctly, witnesses, to be produced, sworn and examined in the cause above named, now pending in said court of appeals sitting in admiralty, in behalf of the said Oliver O'Hara, Agent for said firm, libellant.

1st Interrogatory. Do you know the said Oliver O'Hara? Do you know the said J. and C. Lawton, of said firm, and do you know the said Jacob Housman?

2d Interrogatory. Did you know of a certain shipment of cotton by the schooner North Carolina, George McIntyre master, made at Apalachicola in Florida, by William G. Porter of said Apalachicola, to and for the firm of J. and C. Lawton, at Charleston?

3d Interrogatory. If you say you know of such shipment, be pleased to state so far as you are informed and have knowledge, what became of the cotton so shipped? What was the kind of cotton? What was the value and price of such cotton in the Charleston market in April, and afterwards during the summer and season of 1833?

4th Interrogatory. If you know of such shipment, and are informed of the fact, please state how many bales of said cotton was the property of said firm, and how many bales were consigned to them by said Wil-

liam G. Porter, as the agents and factors of said Porter? Please, also, if you are able, to state the weight of said bales of cotton, and the aggregate weight of the bales belonging to said firm, and the aggregate weight of those consigned to said firm?

5th Interrogatory. State if you know, whether any part of said shipment of cotton went into the possession of, or was taken possession of by the said Jacob Housman? And please, also, to state if you know what became of such cotton as did go into said Housman's possession, and what was done with it by him?

6th Interrogatory. If you know any other matter or thing material in this cause, to either of the parties, be pleased to state the same as fully and particularly as if you were thereto specially interrogated.

Tallahassee, 15th January, 1834.

JOS. L. SMITH, Proctor for Libellant.

Let commission issue.

CHANDLER, BALTZELL, & WHITE.

OLIVER O'HARA, Agent for the firm of J. and C. LAWTON, *vs.* The cargo of the schooner North Carolina and JACOB HOUSMAN, claimant of part of said cargo. } Examination of William Naylor and Joseph Tyler, witnesses, produced, sworn, and examined, separately, on the interrogatories annexed in this case, at Charleston, on the 1st December, 1834.

The witness, William Naylor, answers as follows:

To the 1st interrogatory, he answers. I do know all the parties named.

To the 2d interrogatory. I do know of a certain shipment of cotton by the schooner North Carolina, George McIntyre master, made at Apalachicola in Florida, by William G. Porter, of said Apalachicola, to and for the said firm of J. and C. Lawton, of Charleston.

To the 3d interrogatory. Of the quantity of cotton (336 bales) shipped by the North Carolina, one hundred and twenty-two bales were detained at Indian Key, the remainder (sav two hundred and fourteen bales,) arrived at Charleston on the 22d March, 1833. The description of cotton was uplands, and the prices of that description in April, and through the season from April to October, ranged from 10⅜ to 17 cents.

To the 4th interrogatory. One hundred and ninety-six bales were the property of J. and C. Lawton. One hundred and forty bales were consigned to said J. and C. Lawton, on account of William G. Porter, as the agents and factors of said Porter. The average weight of the 396 bales, was from 369 lbs. to 370 lbs., the aggregate being 72,590 lbs. The average weight of the 140 bales was 369lbs., the aggregate weight being 51,668 lbs.

To the 5th interrogatory, the said witness, William Naylor, answers. The 122 bales detained at Indian Key went into Jacob Housman's possession, 57 bales of which were shipped by said Housman to Charleston, consigned to O. B. Hilliard. The property was identified by the original shipping and planter's marks. The said cotton was sold by the said Hilliard at 13¾ cents per pound.

To the 6th Interrogatory. I know nothing further material to either of the parties.

W. NAYLOR.

Taken and subscribed before us,

JOHN W. MITCHELL, [SEAL.]
H. P. DAWES, [SEAL.]
Commissioners.

The witness, Joseph Tyler, answers as follows:

To the 1st interrogatory he answers: I know them all.
To the 2d. I know nothing of it.
To the 3d. I know nothing of it, nor of the value or quality of cotton.
To the 4th. I know nothing.
To the 5th. I know nothing.
To the 6th. I know nothing.

JOSEPH TYLER.

Taken and subscribed before us,

JOHN W. MITCHELL, [SEAL.]
H. P. DAWES, [SEAL.]
Commissioners.

SOUTH CAROLINA, CITY OF CHARLESTON.

We, whose names are hereunto subscribed, commissioners named in the commission hereunto annexed, do certify, that after being sworn ourselves, we did examine the witnesses, named in said commission, under oath, and their answers to the interrogatories annexed to said commission are truly and correctly herein set forth.

In testimony whereof, we have hereunto set our hands and seals at Charleston, aforesaid, the first day of December, anno Domini, one thousand eight hundred and thirty-four.

JOHN W. MITCHELL, [SEAL.]
H. P. DAWES, [SEAL.]
Commissioners.

Taken from Post Office by the clerk, 8th Jan'y, 1835.

Order.

SUPERIOR COURT, County of Leon, Territory of Florida.

The clerk of said Court will please prepare a commission with the accompanying interrogatories annexed, directed to Henry S. Waterhouse, Silas Fletcher, and Charles Howe, Indian Key, near Key West, Florida, and have the same ready by this afternoon. Let the suit be entitled as it stands on the docket, viz:

OLIVVER O'HAR, Agent of J. & C. Lawton,
vs.
CARGO OF SCHOONER NORTH CAROLINA. } Libel.

Jacob Houseman, claimant of 72 bales of cotton.

BALTZELL & CHANDLER,
For Claimants.

Sept. 22d.

The above was issued 22d September, 1834.

R. J. FLOYD.

Commission.

TERRITORY OF FLORIDA, Leon County.

[SEAL.] By his Honor, Thomas Randall, Presiding Judge of the Court of Appeals for the Territory of Florida.

To Henry S. Waterhouse, Charles Howe, and Silas Fletcher, greeting:

Whereas there is a certain controversy now depending in the said court, for the county and district aforesaid, between Oliver O'Hara, agent of J. & C. Lawton and cargo of schooner North Carolina, Jacob Houseman, claimant of 72 bales of cotton, and whereas, William Fletcher is a material witness in said matter of controversy, and cannot attend our said court in person, without manifest inconvenience:

Now know ye, that we, reposing special trust and confidence in your prudence and fidelity, have appointed you, and you, or any two of you, are hereby authorized and required to cause the said William Fletcher personally to come before you, and after being duly sworn, to examine *them*, concerning the said matter of controversy, agreeably to the interrogatories hereunto annexed; and the answers to the same being plainly and distinctly written, you are to send the same closed up under your hands and seals, to our said court to be held on the first Monday in January next, together with this writ.

Witness, James S. Linn, clerk of our said court, this 22d day of September, A. D. 1834, and of the independence of the United States the fifty-ninth year.

JAS. S. LINN, Clerk.

Interrogatories to Wm. H. Fletcher.

Interrogatories to be propounded to William H. Fletcher, a witness for respondent, Houseman, in a case depending before the court of appeals for the territory of Florida, on a libel originally filed in the Superior Court for the southern district of Florida, by Oliver O'Hara, as agent, &c. *ag't* seventy two bags of cotton.

Interrogatory 1st. Are you, or not, acquainted with the parties?

2d. Do you or not know whether there was an award of salvage for

services rendered by Capt. Smith, of the Hyder Ali, to the schooner North Carolina whilst upon Pickle's reef?

3d. Was or was not the said award in writing?

4th. If in writing, have you a copy of the same; if so, append it to your deposition?

5th. In whose hands is the original paper or award, or when you last saw it in whose hands was it?

6th. If you know any thing further that will make for respondent, please state it? CHANDLER & BALTZELL.

Cross Interrogatories.

1st Cross interrogatory. Please state particularly how you know the facts to which you have testified in answer to the above interrogatories?

28th February, 1834. PR. SMITH.

Examination of Wm. H. Fletcher, before us, H. S. Waterhouse and Charles Howe, commissioners to examine, &c.

1. To the 1st interrogatory, witness says: He is.
2. To the 2d interrogatory, witness says: He is.
3. To the 3d interrogatory, witness says: It was.
4. To the 4th interrogatory, witness says: He has a copy, which is herewith presented, appended and marked A.
5. To the 5th interrogatory, witness says: That when he last saw the award, it (with other original papers in the case) was in the hands of Capt. George M. McIntyre.
6. To the 6th interrrogatory, witness says: That he knows nothing further than may be gathered from the accompanying papers herewith presented by him, and marked B. C. D. E. F. G. and H., except that after the award was made, Capt G. M. McIntyre expressed himself perfectly satisfied, and gave a certificate to that effect to Capt. J. B. Smith. Deponent says that the original of the papers hereto appended were all duly signed by the parties executing them, and that the paper marked B is the copy of a note of protest made by Capt. McIntyre before deponent's father, acting as magistrate (there being at that time no notary public in this vicinity.) This is the only copy, he believes, of the original. All the originals of the accompanying documents were delivered to Capt. G. M. McIntyre. The accompanying papers are copies of the originals taken by this deponent before Capt. G. M. McIntyre left Indian Key.

Cross Interrogatories.

1st Cross interrogatory, deponent says, he was at Indian Key during the whole period within which these transactions occurred, and was clerk to Capt. George M. McIntyre's agent there.

HENRY S. WATERHOUSE,
CHARLES HOWE,
Commissioners.

INDIAN KEY, Monroe county, Florida, November 15, 1834.
Taken from post office, 8th January, 1834.

Commission.

TERRITORY OF FLORIDA, Court of Appeals.

[SEAL.] By his Honor, Thomas Randall, Presiding Judge of the Court of Appeals for the Territory aforesaid.

To Edward J. Hardin and Wareham Cromwell, Esqs., greeting:

Whereas there is a certain controversy now depending in said court between Oliver O'Hara, agent for the firm of J. & C. Lawton, and the cargo of the schooner North Carolina, and Jacob Houseman, claimant of part of said cargo; and whereas William G. Porter is a material witness in said matter of controversy, and cannot attend our said court in person without manifest inconvenience:

Now know ye, that we, reposing special trust and confidence in your prudence and fidelity, have appointed you, and you, or any two of you, are hereby authorized and required to cause the said William G. Porter personally to come before you, and after being duly sworn, to examine him concerning the said matter of controversy, agreeably to the interrogatories hereunto annexed, and the answers to the same being plainly and distinctly written, you are to send the same, closed up under your hands and seals, to our said court to be held on the first Monday in January next, together with this writ.

Witness, James S. Linn, clerk of our said court this 28th day of February, A. D. 1834, and of the independence of the United States the fifty-eighth year.

JAS. S. LINN, Cl'k

Instructions to Commissioners.

Before proceeding to take the examination of the witness, the commissioners must respectively make oath or solemn affirmation that they will faithfully execute the commission in the cause named herein. Any two of the commissioners may act under, and execute the commission. They must take the oath or solemn affirmation of the witness that he will well and truly answer the interrogatories that shall be put to him by the commissioners. The commissioners will then proceed to take down in writing the answers of the witness, to each and every part of each interrogatory; and they are requested to be careful that no part of any interrogatory shall remain unanswered, and the answers of the witness must be signed by him. When the testimony is taken the commissioners must write at the bottom thus: "We, whose names are hereunto subscribed, commissioners named in the commission hereunto annexed, *do certify* that after being sworn ourselves, we examined the witness named *under oath*, and his answers to the interrogatories annexed to said commission are truly and correctly herein set forth." After which, the commissioners must attach all the papers together, fold them all up and seal the packet with several seals, writing their names on the outside of the packet across the seals, and then direct the packet to *Jas. S. Linn, Esq.*, clerk of the Court of Appeals of the territory of Florida, at Tallahassee, and write

on the back also, at the left corner, the title of the suit, as mentioned at the head of the interrogatories. The packet may then be put in the post office by one of the commissioners, and a receipt for the same, *endorsed on the packet*, must be given by the postmaster or his deputy, thus: "Received from (naming the commissioner) one of the commissioners, to be forwarded by due course of mail."

JOSEPH L. SMITH.
Proctor for Libellant.

TALLAHASSEE, 28th day of February, 1834.

COURT OF APPEALS, TALLAHASSEE, FLORIDA,
Term of January, 1834.

OLIVER O'HARA, Agent for the firm of J. & C. Lawton,
vs.
THE CARGO OF SCHOONER NORTH CAROLINA, and JACOB HOUSEMAN, claimant of part of said cargo. } In Admiralty.

Interrogatories to be put to William G. Porter, of the town of Appalachicola, a witness to be sworn and examined in the cause above named, now pending in said Court of Appeals in Admiralty sitting, in behalf of the said Oliver O'Hara, agent for the firm of J. & C. Lawton, libellant.

1st Interrogatory. Do you know the said libellant, and do you know the said Jacob Houseman?

2d Interrogatory. Please state whether or not you shipped from said Appalachicola, a cargo of cotton to the said J. & C. Lawton, of Charleston? If you say you did, please state in what vessel you made this shipment, who was the master, when did you make the shipment, of how many bales or bags did the cargo consist? To whom did the said cotton belong? If you say any part of it belonged to the said firm of J. & C. Lawton, please state how many of said bales or bags, not being the property of said firm, were consigned to them (if any) as your agents, consignees, or factors?

3d Interrogatory. Please state the weight of the several bags or bales of cotton thus shipped by you to the said firm of J. & C. Lawton?

4th Interrogatory. Please also to state the value of cotton, such as was shipped by you as aforesaid at the time of said shipment and during the cotton season soon after said shipment. State also the kind of cotton thus shipped by you and whether the shipment was of *good quality* for the *kind?*

5th Interrogatory. Please state whether or not such shipment was made in the schooner North Carolina, George McIntyre, master, and whether or not said vessel sailed with said cotton for said Charleston on or about the ninth day of March, A. D. 1833, the said cotton being then all in good order?

6th Interrogatory. If you know any other matter or thing material to either party in the above cause, be pleased to state the same as particularly as if you were specially interrogated thereto?

JOSEPH L. SMITH,
Proctor for Libellant.

TALLAHASSEE, 15th January, 1834.

Cross interrogatories by counsel for respondent, Houseman.

1st. Was the cotton placed on board the North Carolina marked so as to distinguish the bales; if so, state the marks, and whether those belonging to you had different marks from those of the Messrs. Lawton; if so, state specially, and the difference in the marks?

2d. In what manner were said bales stowed; were any placed upon deck; if so, state whether those placed on deck belonged to the Messrs. Lawton or yourself?

3. If you know any thing further that will make for respondent, please state it.

CHANDLER, BALTZELL & WHITE,
For Respondent.

Answers.

Answers made by William G. Porter, of the town of Appalachicola, to the foregoing interrogatories, a witness duly sworn and examined in the cause above named, now pending in said court of appeals in admiralty sitting, in behalf of the said Oliver O'Hara, agent for the firm of said J. & C. Lawton, libellant.

Answer to 1st interrogatory. Yes.

Answer to 2d interrogatory. On the 7th March, 1833, I shipped at Appalachicola, on board the schooner North Carolina, George McIntyre, master, bound to Charleston, S. C., three hundred and thirty-six bales and bags of cotton, one hundred and ninety-six of which belonged to J. & C. Lawton, and one hundred and forty to myself, all of which were consigned to Messrs. J. & C. Lawton.

Answer to third interrogatory. The one hundred and ninety-six bales and bags belonging to J. & C. Lawton weighed seventy-two thousand five hundred and ninety lbs. and the weight of the cotton belonging to me was fifty-one thousand six hundred and sixty-eight pounds.

Answer to fourth interrogatory. The cotton belonging to J. & C. Lawton on board the schooner North Carolina, cost at Appalachicola $6,183 34, (say six thousand one hundred and eighty-three $\frac{34}{100}$ dollars,) and the cotton belonging to me cost here $4,636 89, (say four thousand six hundred and thirty-six $\frac{89}{100}$ dollars); it was all bought at very low prices, and had the cargo reached Charleston in safety, I have no doubt it would on arrival have yielded a profit, if it had been sold in that market, of two thousand dollars. It was all upland cotton, and though a mixed lot, was generally of good quality.

Answer to fifth interrogatory. The said shipment was made on board the schr. North Carolina, George McIntyre, master, and although the vessel sailed from this port for Charleston on or about the ninth of March, 1833, the said cotton was all in good order.

Answer to first cross-interrogatory. The cotton belonging to J. & C. Lawton was marked (P.) The cotton belonging to me was marked S. W., J. D., J. E., C. H. Ninety-two bales of the cotton was shipped on deck belonging to J. & C. Lawton, and fifty-four bales belonging to me was shipped on deck; the balance of the cargo was shipped under deck.

And the said deponent saith, that he knows nothing further that he considers of importance to either of the parties.

WILLIAM G. PORTER.

We, whose names are hereunto subscribed, commissioners named in the commission hereunto annexed, do certify that after being sworn ourselves, we examined the witness named under oath, and his answers to the interrogatories annexed to said commission are truly and correctly herein set forth.

In witness whereof, we have hereunto set our hands and seals, this 25th day of April, in the year of our Lord eighteen hundred and thirty-four.

EDWIN J. HARDIN, [SEAL.]
WARHAM CROMWELL. [SEAL.]

Taken from the post office by the clerk, 8th January, 1835.

Silas Fletcher.

Silas Fletcher being sworn, saith:

He was a justice of the peace on the 18th May last, and that the endorsement on the paper marked A, which is hereto attached, was signed by him as such. Witness heard Capt. Smith, of the Hyder Ally, several times propose to Capt. McIntyre to come to Key West to have the salvage settled, which Capt. McIntyre positively refused to do, saying that it would detain him some time, and his expenses would be greater, than by settling it on Indian Key. Witness heard Capt. Smith propose to Capt. McIntyre (after the arbitrators had determined the salvage) to throw oneside all that had been done and come to Key West, which he, Capt. McIntyre, positively refused.

SILAS FLETCHER.

Objection.

The appellee, by attorney, objects to the admission of any admissions or allegations of persons not parties of record, as evidence in the case before the court.

WM. R. HACKLEY,
Att'y for Appellee.

A.

Statements of Charles M. Johnson and Lemuel Otis.

TERRITORY OF FLORIDA, *Monroe County.*

INDIAN KEY, 16th March, 1833.

Joshua B. Smith, claimant,
George McIntyre, defendant.

Appeared before us, Lemuel Otis and Charles M. Johnson, arbitrators for the above; they appeared before us and made their statements. After

examining them thoroughly, we made up our minds that Capt. George McIntyre shall pay, or cause to be paid, to the salvors thirty-five per cent. on the vessel and cargo for services rendered.

(Signed) LEMUEL OTIS,
CHARLES M. JOHNSON.

B.

Capt. George McIntyre's protest against the seas.

INDIAN KEY, 16th March, 1833.

George McIntyre, master of the schooner North Carolina, personally appeared before me to note his protest against his getting ashore on the Florida reef. He sailed from Apalachicola on the ninth of March, and on the fourteenth instant the vessel struck on the said reef, and he got assistance from Captain Smith of the schooner Hyder Ally, and by his assistance he got me off.

(Signed) SILAS FLETCHER, J. P.

C.

A Bond for Joshua B. Smith and George McIntyre.

Bond.

TERRITORY OF FLORIDA, *Monroe County.*

INDIAN KEY, 16th March, 1833.

Know all men by these presents, that I, George McIntyre, captain of the schooner North Carolina, of Wattoboro, State of Maine, and Capt. Joshua B. Smith, of the schooner Hyder Ally, in the county of Monroe, whereas, they both hold themselves firmly bound to settle the difference by leaving it to two men, Charles M. Johnson, chosen by Capt. George McIntyre, on the one part, and Lemuel Otis, chosen by Captain Joshua B. Smith, on the other part. Whereas, they have firmly bound themselves under the penalty of five thousand dollars to agree to whatever award the arbitrators bring in, if either of the parties fly from the decree made by the arbitrators, he or they do firmly bind themselves to pay over to Jacob Housman the sum of five thousand dollars, to be held by him until it is amicably settled by some court of justice. This bond is drawn up to settle the salvage of the schooner North Carolina, Captain George McIntyre, and Captain Smith, of whom it may concern.

(Signed) GEORGE McINTYRE,
JOSHUA B. SMITH.

D.

Report upon Examination.

TERRITORY OF FLORIDA, *Monroe County.*

INDIAN KEY, 16th March, 1833.

We, Lemuel Otis and Charles M. Johnson, shipmasters, all reside on Indian Key, East Florida, do hereby jointly and severally declare and attest unto all whom it may concern, that on the 16th day of March, one thousand eight hundred and thirty-three, at the instance of Capt. George McIntyre, we went on board and along side the schooner called the North Carolina, of the burthen of one hundred and twenty-nine tons or thereabouts, to examine the said schooner, her hull, masts, yards, anchors, cables, rigging, running rigging, and sails, and every other store to her belonging; and having carefully and particularly inspected, examined and surveyed the said schooner, called the North Carolina, and her several stores, do report that the said vessel, hull, masts, &c., are fit to proceed to sea; all which we are ready to affirm upon oath when thereunto required.

In witness of their hands and seals.

(Signed) LEMUEL OTIS,
CHARLES M. JOHNSON.

E.

Appraisement.

Appraisement of Schr. North Carolina.

TERRITORY OF FLORIDA, *Monroe County.*

INDIAN KEY, 16th March, 1833.

We, Lemuel Otis and Charles M. Johnson, by the order of Captain George McIntyre, went on board the schr. North Carolina, and praised her to be worth two thousand dollars, and three hundred and forty-seven bales of cotton to be worth twenty dollars per bale here, making six thousand nine hundred and forty dollars.

(Signed) LEMUEL OTIS,
CHARLES M. JOHNSON

F.

Capt. George McIntyre's Statement.

TERRITORY OF FLORIDA, *Monroe County.*

INDIAN KEY, 16 March, 1833.

Capt. George McIntyre, of the schooner North Carolina, appeared before us, Charles M. Johnson and Lemuel Otis, and made this statement, March fourteenth: he was standing along on a wind; at 12 o'clock at

night she struck on the reef. As soon as she struck, I let go the starboard anchor and took in all the sails, and run out my kedge to the eastward; then hove her head round to the wind. I hove her about one-third of her length ahead; found I could not heave her any further; then carried out the starboard anchor.

At daylight the schooner Hyder Ally, Capt. Joshua B. Smith, came alongside and offered assistance, and I thought it advisable to take his assistance, as a vessel laying in a dangerous situation. Capt. Smith dropped alongside and commenced taking out cargo. Finding his vessel striking heavy on the bottom, was obliged to heave his vessel ahead, and then commenced taking out cargo until she floated sufficient to heave her off. We then made sail on her and proceeded with a pilot to Indian Key.

(Signed) GEORGE McINTYRE.

G.

Capt. J. Smith's Statement.

TERRITORY OF FLORIDA, *Monroe County.*

INDIAN KEY, March, 1833.

Captain Joshua B. Smith, schooner Hyder Ally, appeared before us, Charles M. Johnson and Lemuel Otis, and made this statement. By daylight got under way, and saw a schooner apparently ashore; stood out towards her, lowered the boat down, and went aboard: found her to be the schooner North Carolina from Apalachicola, bound to Charleston, with a load of cotton; found her lying on Pickles reef in about five and a half or six feet water, and she drawing seven and a half feet, and by the request of the captain, dropped alongside and commenced taking in cargo, and my vessel striking heavy on the rocks all the while, and continued taking out, until we lightened sufficient for getting off. By great exertions we made out to get her off by high water and taking out one hundred and fifteen bales of cotton.

H.

Receipts of Joshua B. Smith.

Receipt.

Received, Indian Key, March 16th, 1833, from Capt. George McIntyre, one hundred and twenty-two bales of cotton, for salvage on the schooner North Carolina, as cargo.

(Signed) JOSHUA B. SMITH.

Received, Indian Key, March 16th, 1833, from George McIntyre, a draft on J. & C. Lawton for six hundred dollars, and one hundred in cash, for salvage on the schooner North Carolina.

(Signed) JOSHUA B. SMITH.

I, Thomas H. Duval, clerk of the court of appeals for the Territory of Florida, do certify that the foregoing *are* true copies of the papers annexed to the deposition of Silas Fletcher, in the case of Housman *vs.* the cargo of schooner North Carolina.

[SEAL.] In testimony whereof, I hereunto set my hand and affix the seal of said court, this 2d day of February, anno Domini 1839.

THOS. H. DUVAL, Clk.

STATE OF SOUTH CAROLINA:

By his excellency Robt. Y. Hayne, Governor and commander-in-chief in and over the said State aforesaid.

[BOBT. Y. HAYNE, SEAL.]

To all to whom these presents may come, know ye, that John W. Mitchell, Esquire, whose seal and signature appear to the instrument of writing hereunto annexed, is one of the justices of the quorum, assigned to keep the peace for the said State, and notary public commissioned by letters patent, under the great seal of the State; therefore all due faith, credit and authority is and ought to be had and given to his proceedings and certificates as such.

In testimony whereof I have hereunto set my hand, and caused to be affixed the seal of the State, in the city of Charleston, the twentieth day of December, in the year of our Lord one thousand eight hundred and thirty-three, and in the fifty-eighth of the independence of the United States of America.

By the Governor:

JAMES KINGMAN,
Deputy Secretary of State.

STATE OF SOUTH CAROLINA, *City of Charleston.*

Know all men by these presents, that we, Joseph Lawton and Charles Lawton, copartners trading under the firm of J. & C. Lawton, do make, constitute, and appoint, Oliver O'Hara, Esquire, of Key West, our true and lawful attorney, for us, and in our names and stead, to object to, and by all lawful ways and means cause to be set aside, the award made by the arbitrators at Key West, in the salvage case of the schooner North Carolina, commanded by Captain McIntyre, and to use all lawful ways and means to bring the matter of salvage at Key West before some court or courts of competent jurdisdiction; and for us, and in our names, to prosecute, litigate, and defend our rights respecting the said salvage, in any court and courts, until a final adjudication of the matter shall be had; and, further, to do and perform all and every other matter, act, and thing, that our said attorney may deem necessary for effecting the premises, in the same manner as we might or could do if personally present; with power also, an attorney or attorneys under him, for that purpose, to make and substitute, and to do all lawful acts for effecting the premises, hereby ratifying and confirming all that our said attorney, or his substitute or substitutes, shall do therein, by virtue hereof.

In witness whereof we have hereunto set our hands and seals the twentieth day of December, in the year of our Lord one thousand eight hundred and thirty-three.

JOSEPH LAWTON, [L. S.]
CHARLES LAWTON. [L. S.]

Sealed and delivered in the presence of
JOHN W. MITCHELL.

Be it known that on the twentieth day of one thousand eight hundred and thirty-three, and in the fifty-eighth year of the independence of the United States of America, before John W. Mitchell, Esquire, justice of the quorum in and for the said State, and notary public by letters patent under the seal of the State, duly commissioned and sworn, came Joseph Lawton and Charles Lawton, composing the said firm of J. & C. Lawton above named, and acknowledged the foregoing power of attorney to be their act and deed.

In testimony whereof I have hereunto set my hand and affixed my seal of office at Charleston, in the State of South Carolina, the day and year last mentioned. [SEAL.]

J. W. MITCHELL, Q. U,
Notary Public.

Exceptions.

JACOB HOUSEMAN
vs.
OLIVER O'HARA, agent, &c., for Lawtons.

Assignment of errors to a decree in admiralty of the judge of the Southern Judicial District.

The court erred in the decree rendered.

2dly. They should have sustained and not overruled the plea to the jurisdiction.

3dly. They should have decreed for defendant and not for libellant.

CHANDLER & BALTZELL,
for Appellant.

Filed 6th January, 1834.

J. & C. LAWTON
vs.
BAGS OF COTTON, Houseman, claimant.

Appeal from the Southern District of Florida.

Permission is given the parties, on consent filed, to withdraw interrogatories taken in the case since its pending in the court of appeals.

JAMES WEBB,
Presiding Judge, C. A.

2d February, 1836.

Deposition of C. M. Johnson.

The deposition of Capt. Charles M. Johnson, taken by consent of the parties, de bene esse, in the case of Oliver O'Hara, agent for J. & C. Lawton, against the cargo of the schooner North Carolina, and on behalf of said O'Hara. Jacob Houseman, claimant of 72 bales of cotton, attached by process issuing by virtue of libel filed by O. O'Hara, agent as aforesaid. The deposition is, however, consented to with the understanding that said Jacob Houseman hereby reserves to himself all rights which accrued to him in virtue and by means of having, by his proctor, filed in the clerk's office an order for a subpœna, to be issued for the attendance of the said Charles Johnson, to give evidence, in proper person, in the superior court, and with the additional understanding that said Jacob Houseman reserves to himself all right of objection to this testimony, except that it is not given in the superior court in proper person.

1st. Charles M. Johnson states that he was at Indian Key when the schooner North Carolina, arrived in March last, and her cargo was cotton; had some bales on deck; the schooner Hyder Ally arrived at the same time, and had a cargo of cotton on board taken from the deck of the schooner North Carolina, as was alleged to have been on the Florida reef; the schooner Hyder Ally had on board over one hundred bales, the exact number not recollected; the cotton brought by the Hyder Ally was landed at Indian Key, and also some bales from on board the schooner North Carolina, all of which was stored in the storehouse of Captain Houseman, at that place. Captain McIntyre, master of the schooner North Carolina, gave the cotton to the salvors at the rate of about 20 dollars per bale, he not having any money. Capt. Joshua B. Smith, master of the schooner Hyder Ally, was the salvor. Captain McIntyre stated that the cotton was shipped by William Porter, of Apalachicola, and consigned to J. & C. Lawton. Capt. J. B. Smith was present in the store at the time of this conversation.

Examination by claimant's proctor; value of vessel was appraised by deponent and others; the vessel and cargo was valued at about $9,000; the salvage was determined by arbitration; the award was 35 per cent.; this deponent was one of the arbitrators, and on behalf of Capt. McIntyre, who attended to the business diligently, and appeared to be perfectly satisfied with the award. Capt. Houseman, Capt. J. B. Smith, and deponent, advised Capt. McIntyre to go down to Key West; he replied that he would sooner lose his vessel and cargo first; Capt. Houseman advised him to proceed to St. Augustine, as it was on his way to Charleston, his port of destination, and have the salvage settled there by the court, which he declined doing, as he wished to get into the gulf as soon as possible, and proceed on his voyage.

When the schooner North Carolina arrived at Indian Key, her stern boat was very small, and her long boat was entirely unfit for use, as her seams was very open. The award spoken of was reduced to writing; she proceeded on her voyage without any repairs. The survey was also reduced to writing; a part of her keel was off forward, and the gripe stood athwart ships; this deponent thinks it was a very deserving case of sal-

vage. Capt. McIntyre gave Capt. Smith, of the schooner Hyder Ally, a certificate of his entire satisfaction of the award of the arbitrators, and that it was his wish that the case should be settled at Indian Key by arbitration. CHARLES M. JOHNSON.

Sworn to before me this 19th day of August, 1833.
EDE VAN SWOM, J. P.

Note. This deposition first exhibited to me on the 28th February, 1834, by counsel for claimant.

TALLAHASSEE, 28th February, 1834. JOSEPH L. SMITH,
Proctor for Libellant.

I hereby certify that Charles M. Johnson, the within named deponent, personally appeared before me on the evening of the 19th inst., and that he made oath and subscribed to the same in my presence, and that A. B. Gordon, proctor for libellant, R. C. Crozier, and Edward Chandler, proctors for claimant, were personally present at the examination of the aforesaid deponent, Charles M. Johnson.

In testimony whereof I have hereunto set my hand and seal at the city of Key West, in the county of Monroe, and Territory of Florida, on this 19th day of August, 1833.

EDE VAN EVOUR, J. P. [L. S.]

The foregoing deposition received and read in evidence, except so much as relates to an arbitration, award, survey, and certificate, those matters being in writing are susceptible of higher proof, and are therefore rejected from the deposition. JAMES WEBB, Judge.

Notice.

(Papers attached.) No. 1. December 12, 1833.

OLIVER O'HARA
vs.
CARGO OF NORTH CAROLINA, Houseman, claimant of 72 bales of cotton.

Sir: At the clerk's office to-morrow, at 10 o'clock, A. M., I shall proceed to take the testimony of Charles M. Johnson, under the provisions of the consent heretofore mutually entered into.

Very respectfully, your obedient servant
ED. CHANDLER, for Claimant.

To WM. R. HACKLEY, Esq.,
For Libellant.

No. 2.

Sir: Take notice that to-morrow at 2 o'clock, I shall proceed to take the testimony of Ira Gould, at the office of A. H. Day, Esquire, clerk of

the superior court, to be used in evidence in the court of appeals of Florida, in the case of Jacob Houseman, appellant, and Oliver O'Hara, alleged agent of J. & C. Lawton, is appellee.

EDWARD CHANDLER, for Appellant.

To Wm. R. Hackley, Esq., Present.

Key West, December 2, 1833.

Received, Key West, December 21, 1833, of A. H. Day, clerk of the superior court for South Florida, the original deposition of Charles M. Johnson, taken before Ede Van Evour, Esquire, in the case of the libel of O. O'Hara, agent, &c. *vs.* Cargo of schooner North Carolina.

Notice.

Key West, December 2d, 1833.

Sir: Take notice, that to-morrow at 12 o'clock, A. M., at the office of A. H. Day, clerk of the superior court for the southern judicial district of Florida, I shall proceed to take the testimony of F. A. Brown and Thomas Eastin, to be used as testimony in a case now before the court of appeals for said territory, in which Jacob Houseman is appellant, and Oliver O'Hara, agent for J. & C. Lawton, is appellee.

Yours, &c.

WM. R. HACKLEY.

Service of copy acknowledged.

EDWARD CHANDLER, for Appellant.

Opinion.

[See entries A. B. C. D. E. and F. at the end of record.]

Court of Appeals, January term, 1838.

Jacob Houseman
vs.
Cargo of Schr. North Carolina.

This case comes up by appeal from the decree of the judge of the southern district. In May, 1833, a libel was filed in the court below, by Oliver O'Hara, agent of Messrs. J. & C. Lawton, resident merchants of Charleston, S. C., alleging the illegal taking on the high seas, from on board the schooner North Carolina, of certain bales of cotton, owned by and consigned to said J. & C. Lawton. That the said cotton was taken from the said schooner North Carolina by the wrecking schooner Hyder Ali, and together with the first named schooner carried into the port of Indian Key, where a large portion of said cotton is now kept and illegally detained. The libel then prayed process of attachment against the said cotton, with monition, &c. Process of attachment with monition was awarded and issued as prayed for, and the marshal made a return of having

executed the same by attaching seventy-two bags of cotton at Indian Key, 20th May, 1838, in the hands of Jacob Houseman. On the 25th May, Jacob Houseman appeared as claimant, and by petition prayed to be allowed to retain the cotton on entering into bond, &c., to abide the decree of the court. The libellant not objecting, the order of restoration was made by the court and the cotton delivered to claimant on stipulation. In July, 1838, Jacob Houseman appeared at the court in Key West and filed his claim and answer; after averring his quiet and peaceable possession of the 72 bales of cotton without force, concealment or threats, and after demurring or excepting to the jurisdiction of the court in the premises, &c., for further answer says, that he does not admit that the cotton belonged to the cargo of the schooner North Carolina. He denies that any part of the said cotton ever has been illegally detained in his possession, &c., as alleged in the libel. He further alleges that the said J. & C. Lawton are not the owners of any cotton in his possession, and further avers "that he does not know of his own knowledge that the said J. & C. Lawton ever were the owners of any cotton in this respondent's possession at the time of the filing of the libel, &c." On the 20th August following, a further plea to the jurisdiction of the court was filed by said claimant; previously to which, however, by consent of the proctors for both parties, an order had been passed for the taking testimony in the cause, in the mode agreed upon by the parties.

Finally, after proofs taken, and a hearing had in the cause, the court below decreed in behalf of the libellants, that they recover the seventy-two bales of cotton levied upon, to be restored to them with costs. From this decree, claimant, Houseman, entered an appeal to this court. In this court on the 3d of February, 1834, Messrs. J. & C. Lawton, by their agent O'Hara, file a supplemental libel, in which, after reciting the shipment of three hundred and thirty-six bales of cotton in the schooner North Carolina, George McIntyre, master, in the port of Apalachicola, Florida, by Wm. G. Porter, and that said cotton was partly owned by and the whole consigned to Messrs. Lawton, of Charleston, and that the vessel sailed on her voyage the 9th March. They charge that on the 15th March the schooner was met near the Indian Key on the coast of Florida, by the wrecking schooner Hyder Ali, Joshua B. Smith, master, and that the said master of the wrecker then forcibly took one hundred and fifteen bales of the cargo of the North Carolina on board his own vessel, and proceeded with said cotton and the said schooner North Carolina to the port of Indian Key, having at the same time the said schooner North Carolina under his control. That both vessels reached said port on the 15th March. That said Smith did then and there take and land from his own vessel the said 115 bales of cotton, and other bales from the schooner North Carolina, the whole amounting to 122 bales, and deposited the same in the ware-house of the claimant, Jacob Houseman.

The libel *further* charges that the said Jacob Houseman was concerned in interest, and was in co-partnership with said Smith and one Captain Packen, and did act and co-operate with them in the taking said cotton, both on the high seas and at the Indian Key, and in all the proceedings there, and did then and there convert the same to his own use. The sup-

plemental libel then traverses and denies the pretended allegations, that the cotton was taken from the Schooner North Carolina, to relieve her from the reef known as Pickles reef, on which it was said she had struck; and that the same had been deposited and held as salvage or compensation for the relief afforded, and that Houseman had afterwards purchased the same. The libel then proceeded to charge the allegations on behalf of the claimant as false and fraudulent, and for the covinous purpose of concealing the true character of the transaction, and the collusive combination with said Smith; that the relief, if any was afforded, was trifling, and afforded no right in law for taking the said cotton or the said schooner North Carolina to the Key, and for converting said cotton to his own use. That the delivery of the same, if truly so delivered freely by said George McIntyre, and without coercion, which by libellant is neither admitted nor believed, was contrary to law without authority, and was fraudulent and barratrous, and passed no right, title or property to Smith or Houseman in the cotton; and that the pretence of salvage and delivery of the cotton to pay and satisfy the same were altogether collusive and intended to cover the fraud and barratry above stated.

That further, to cover the said fraud, the said Houseman and Smith did conceal from said McIntyre, that they were jointly interested and consorted in the wrecking business, and in the claim of salvage against the North Carolina and cargo, and that by concealing said facts, said McIntyre was induced to appoint said Houseman, and did appoint him his agent and consignee of said vessel and cargo, which trust said Houseman accepted and abused. The libel then charges the amount and value of the cotton thus abstracted, and that of the 122 bales taken thus illegally, only 72 bales had been attached and taken by the process of the court, that the remaining fifty had been removed from the jurisdiction of the court, or so concealed that it should not be reached, and was so wholly lost to libellants. The libel therefore prays that said Jacob Houseman, already before the court of appeals as appellant and as claimant, may be compelled to answer, &c., that the court will decree full and adequate relief in the premises, that he be decreed to pay to libellants the full value of the said 122 bales of cotton and all just damages which have arisen, &c., together with all costs and expenses and fees, &c.

To this supplemental libel an answer was filed on the 28th February, 1834, on behalf of Jacob Houseman, in which he sets forth substantially that the schooner North Carolina, George McIntyre, master, while proceeding on her voyage from Apalachicola to Charleston, with a cargo of cotton, ran on shore on the Florida reef and was dangerously injured; that at the request of the said McIntyre, Smith, the master, and the crew of the regularly licensed wrecking schooner Hyder Ali, afforded assistance, and by taking off sundry bales of cotton from the North Carolina relieved her from peril and got her afloat; "that from the vicinity of Indian Key, and its being in the direct route to Key West, and at the earnest solicitation of Captain McIntyre, said Smith was induced, though reluctantly, to carry to Indian Key so much of the cargo aforesaid as he had received in his vessel, and that thither also followed the North Carolina with the balance of the cargo." That on the arrival of the vessels at

Key West, "McIntyre requested the advice of this claimant, in what manner it was most proper to remunerate the salvors, and was urgently persuaded by this claimant, by the said Joshua B. Smith and others, then and there, to proceed either to Key West, St. Augustine or Charleston, for the purpose of having the question and salvage settled, &c."

That this course was strenuously opposed by said McIntyre, "stating it to be all important to have the question adjusted as speedily as possible, that he might proceed on his intended voyage." That finding it vain to contend against this purpose of McIntyre, and after repeatedly urging the above advice, he, M., was obliged to yield or agree to the reference of the question of salvage to the award of arbitrators to be mutually chosen at Indian Key; that the reference was had, and the award made, decreeing "35 per cent. upon the whole value, (which had been duly and fairly appraised) of both vessel and cargo, to be paid to said Smith for his services with those of his crew and vessel."

That McIntyre subsequently declaring his inability to pay all the salvage in money, it was consented to by the salvors to receive from said McIntyre a satisfaction of the award, in kind; and accordingly sundry bales of cotton, appraised as aforesaid, were received by said Smith and delivered to him by said McIntyre in satisfaction of the award, which bales of cotton "were afterwards, at the request of said Smith, safely stowed in the warehouse of said respondent, at Indian Key. That said cotton was afterwards by said Smith sold to said respondent, fairly, and for a full consideration; and that in this manner, and not collusively and through fraud, was this cotton acquired.

Respondent denies that at any time he acted under concealment or betrayed trust; "that if he ever did receive money from said McIntyre, (which he does not admit,) it did not amount to more than the sum usually charged and received by merchants," &c. He repeats his denial of any collusion in taking the vessel and cargo to Indian Key, and that the captain, McIntyre, was advised and *instructed* to go to Key West, or St. Augustine, or Charleston, &c.

He denies the right and interest of libellants in and to any of the cotton, either that levied on, or "the remainder of bales which he insists have been fairly and honestly *disposed* of, and were purchased by him for a fair price, and under the confident belief that he was acquiring property free from any doubt of title."

He denies that he owned any part of the vessel, the Hyder Ally, or had any control in any shape over her.

The answer then prays "that the claim of the libellant in the original and supplemental libels be dismissed, and that the claim of the respondent to said property under the award aforesaid be sustained, and that his costs be decreed to him, and such damages for the illegal seizure of said cotton may be awarded to him as to the court may seem right, &c."

On the same 28th February, there was also filed in this court (by agreement with libellants,) what is styled a claim on behalf of Housman for salvage. This claim contains two counts, the first of which, setting forth the same facts contained in the answer, in substance asserts the right of claimant to the cotton, on the ground of the award of the same to said Smith, and of claimant's purchase from him.

The second count asserts the right of claimant to cotton on the ground of its having been duly paid and delivered, in kind, to said Smith as salvage for meritorious services, by Capt. McIntyre, as of right he might do, and of the subsequent *bona fide* purchaser for a valuable consideration of said cotton, by claimant from said Smith, and in reference to said purchase; he expressly adds "this respondent *being ignorant and having no notice of the claim of any third person whatsoever;*" and besides the claim for restitution and costs, this claim also concludes with a prayer for costs. Both the answer and claim in this court appear to have been filed by consent, as by an agreement endorsed on each of them to that effect, signed by libellant's counsel, and dated 27 February, 1834, will be seen.

On the 28th February, 1834, the respondent and claimant Housman also filed a demurrer to the supplemental libel, and to the relief and recovery sought therein for the 50 bales of cotton not levied on, but alleged to have been carried off or concealed by respondent. This demurrer was objected to by libellant's counsel, by an endorsement thereon "as not being filed in time," nor until after answer put in. In relation to this demurrer it may be proper at once to remark, that even if the agreement of the 27th February endorsed on the answer and claim should not conclude us, as to the priority of their date and exhibition in this cause, we, nevertheless, hold that the filing those pleas to the merits by the respondent is a virtual withdrawal and abandonment of his demurrer. But a formal decision on this demurrer becomes of the less importance as the same point has been presented in argument, or an objection to the admissibility of this new claim for damages in this appeal, the same not having been performed in the court below.

As this is an objection preliminary in its nature, it will be at once considered. This cause is presented to this court in its character of an appellate court of admiralty, a circumstance which essentially affects its rights and authority, as distinguished from its ordinary powers and functions as a court of errors in cases at common law. This court has repeatedly decided in consonance with established principles, that on appeals in admiralty, and instance causes, the case is here to be tried "de novo" on the merits, as in circuit courts of the United States. That it is competent in this court to admit amendments of the information on libel, new allegations and new proofs, "non allegata allegare et non probata probare." Such was the decision pronounced this present term in the case of the San Fernando, or the authority of repeated adjudications to that point in the circuit courts, and in the Supreme Court of the United States.

The generality of this rule as laid down by the Supreme Court in the cases of the "Caroline," 7 Cranch; the Edward, 1 Wheaton, and the Mariana Flora, 11 Wh.; seems fully to cover this case. The terms used are "amendments may be made," "new allegations and new counts may be filed." It seems to follow, then, that the entire merits of the controversy are opened anew, and the only limitation we can discover to this result is, that where a matter has been decided in the court below, the party not appealing from that decision may not draw it in question in the appellate court. It is as to him "res judicata" rendered final from his acquiescence. In the case of the "Edward" the court express the

following opinion: "Three questions have been made and discussed by the counsel. 1st. Whether the circuit court could upon appeal allow the introduction of a new allegation into the information, by way of amendment? And on this question they answer—"Upon the first question it is contended for the claimant that the circuit court has only appellate jurisdiction in cases of this nature, and to allow the introduction of a new allegation, would be in fact to originate the cause in the circuit court. This question appears to be fully decided in the cases of the Caroline and Emily, decided in this court. These were informations "*in rem*" under the slave trade acts, and the opinion of this court was that the evidence was sufficient to show a breach of law; but the informations were not sufficiently certain to authorize a decree. The sentence of the circuit court was therefore reversed, and the cause remanded to that court with directions to allow the information to be amended."

Now, if in informations at the suit of the Government on penal statutes inflicting severe pains and forfeitures, such new allegations may be introduced against the consent of the accused, we can discern no reason why, in a controversy between citizens upon a mere question of property, a more rigid rule of pleading should be applied; this would be an inversion of the ordinary rules of law, applicable to those different actions.

Nor will the language used by the court warrant the inference, that the nature and exhibit of the amendment made in the case of the Edward, constituted the reason for its allowance. The proposition is merely hypothetically stated, without admitting the validity of the objection. The court adds—"But even if an amendment would be improper, if it stated a different case from that presented to the district court, the objection would not apply in this case, in which the offence, though more definitely laid in the second allegation than in the first, is yet substantially the same." A concession of the law thus made "arguendo" by a court, the fact, as stated, not warranting its application, can never be used as an exposition of the law in another case. Surely, too, it would not be legitimate to argue upon the greater or less materiality of the amendment, in a case where that amendment set forth a breach of the law, when without it, the offence was not sufficiently certain, and when the new allegation authorized a decree of condemnation for the want of which the former decree was reversed.

This case is important, farther, to show that such an amendment may be made by a party not appealing from the decree or sentence below, and that party the libellant. The language of Mr. Justice Story, in delivering the opinion of the Supreme Court, in the case of the "Mariana Flora," is still more emphatic.

"An objection, (he states,) which is preliminary in its nature, has been made to the admissibility of this new court, to the libel filed in the circuit court, upon the ground, that the original subject matter was exclusively cognizable in the district court; and to allow this amendment, would be to institute an original, and not an appellate inquiry into the circuit court. But this objection itself is founded on a mistaken view of the rights and authorities of appellate courts of admiralty. It is the common usage and admitted doctrine of such courts, to permit the parties on the appeal to introduce new allegations and new proofs, "non allegata allegare et non

probata probare." The courts of the United States in the exercise of appellate jurisdiction in admiralty causes, are by law authorized to proceed according to the course of proceedings in admiralty courts. It has been the constant habit of the circuit courts to allow amendments of this nature in cases where public justice and the substantial merits require them, and this course has not only been incidentally sanctioned in this court, but on various occasions, in the exercise of its own final appellate jurisdiction, it has remanded causes to the circuit court, with directions to allow new counts to be filed."

We have heard, and we can imagine no argument or reason against the admissibility of the supplemental libel in this cause, which has not been met and answered by the learned judges in the above cases. "It is the constant habit of circuit courts to allow amendments" and "new counts to be filed," where public justice and the substantial merits require them. No other limitation or restriction on this power is stated. Now, if this court should, in its final judgment in this cause, agree with the libellant, that not only seventy-two bales of his cotton, but other fifty bales have been fraudulently and tortiously taken from him, and converted by respondent to his use, by a gross violation, as well of municipal law, as of fair dealing, would not the substantial merits "require that the redress should be commensurate with the injury?" Why should it not be so? Where is any laches on his part? This original libel was framed when he was unaware of the quantity of cotton in Housman's possession, or on the island of Indian Key. He might then as reasonably conjecture that the attachment will reach the whole as well as any part of it. True, it may be urged, that after the return of the marshal, he had time by amendment to have framed his libel to meet the state of facts then presented; but the owners were at a distance acting through an agent, who, in that early period of the history of the court (now presenting many able counsel) may have been "inops concilii." He may, too, have been ignorant of many facts only disclosed in the trial below, which were essential either to suggest or to justify this new claim.

It is a consideration of great weight, too, in deciding this point, that if the allegations and charges of this supplemental libel can be established, libellants have a clear right to pursue and prosecute for those fifty bales of cotton, either by an action of trover at common law or by libel for a marine tort in the admiralty. Now, the parties having already voluntarily submitted the same question to this court, having taken and exhibited their proofs, and fully argued it, on the merits, the incompetency of this court to decide the question thus submitted ought not to be decided on grounds at all doubtful. The court should rather incline to exercise a power essential to the substantial merits of the case, and which may prevent further controversy.

For these reasons we hold the supplemental libel to be properly admitted into the cause, and shall now proceed to investigate the facts of the case. As to the original accident on the voyage by which the vessel and cargo became subjected to the claim of salvage on behalf of Capt. Smith, of the schooner Hyder Ally, there is little or no proof. The only direct and positive testimony to this point is found in the deposition of Ira Gould, mate of the wrecking vessel Hyder Ally. This witness, as one of

the crew of the wrecker, must originally have had an interest in the question, tho' on his examination, he swears that he "is not at *this time* in any way interested in the event of this suit." But to whatever exceptions his testimony may be liable, it may be taken to be true for all the purposes of this inquiry, and it presents a claim for a very trifling remuneration by way of salvage.

The vessel was on Pickles reef discovered by the Hyder Ally on the morning of the 15th March, then in 6 feet water at low tide, the wreck drawing eight feet. There are two tides in 24 hours, he says, on that reef, and we learn, as a geographical fact, that the tides rise from 3 to 5 feet. At four o'clock of that day she would have been taken off by the tide alone, we may well presume without foreign aid, the weather being moderate, (as this witness says) and having sustained no serious injury, might have pursued her voyage. But allowing the expediency of taking off part of the cargo, and of the vessel and the cotton being properly taken to Indian Key, let us trace the proceedings there.

The proceeding at all, or stopping at Indian Key, (that being out of the route to the destined port of the vessel,) could only be justified as being in transition to Key West, a port of entry and seat of an admiralty court, and for the purpose of adjusting the payment of salvage. The condition of the vessel being sound and uninjured, as is proved by her subsequent passage to Charleston, and the survey held at that port, did not require this delay at Indian Key. The act of Congress of 3d March, 1835, required that in such a case the vessel and cargo be carried into a port of entry. This act must have been known to the wreckers, (the salvors) if not to Capt. McIntyre, as it imposed a positive duty on the former. The reason assigned by Houseman in his answer in this court for proceeding to Indian Key was, that it was in the direct route to Key West, and there Capt. McIntyre earnestly insisted to go. Why then did he not fulfil his purpose and proceed to Key West? The sequel of his proceedings will shew. When at Indian Key he was equally solicitous to settle the question of salvage there, and positively declined to proceed further, "altho' strenuously advised by all the persons at the Key, if we are to take as proofs his declarations as reported. We cannot regard his declarations as proofs in this cause, and if we could, they cannot avail to justify his conduct. They would prove him to have been grossly corrupt or utterly weak and imbecile.

We hold that he had no right to make, nor the salvors to accept, his overture to settle the salvage at Indian Key. The law prohibited his being carried there, and his duty to his owners enjoined a different course. Why should he proceed there? On the reef he had only parted with 115 bales of his cargo; where was the imperious necessity, where a valid assignable reason for any precipitation in adjusting the salvage? Why not proceed on his voyage with his then load, if he could not induce the salvors to part with his freight? What was to prevent this? We cannot hesitate to declare this whole matter of settlement and adjustment of salvage at Indian Key to have been illegal and void. The rights of the master over vessel and cargo are too well established and too well known to give any color of title to this alleged transfer.

"The master represents the owner of the ship, whose agent he is, but not the owner of the cargo. It is only in cases of instant and unforseen and unprovided necessity that the character of agent and supercargo is sometimes forced upon him by the policy of the law. 1 Livermore on Agency, 179, 180."

The Supreme Court lay down "the rule, as applicable to agencies of every description, that the agent cannot bind his principal except in matters coming within the scope of his authority; and this rule applies particularly to a master and owner of a vessel, and is construed with considerable strictness." (Gen'l In. Fire Co. *vs.* Ruggles, 12 Wh. 408.) A master of a vessel cannot, except in cases of necessity, and to enable him to complete the voyage, hypothecate his vessel or cargo, or sell any part of the latter, for the payment of any necessary expenses incurred in any port into which the vessel might be driven in distress. 2 Mason, W. M. *vs.* Potter.

In cases of extreme necessity, the master may, in a foreign country, sell the vessel, &c., to prevent the property from perishing, but not in a country where the owners live. (2 Wash. 66 R. 150, 200.) The same learned judge lays down the rule which should govern a master in three exigencies. He must raise money by means least injurious to the owner. He should first strive to raise money by bills on the owner. If he fail in this way he may pledge the ship for necessary advances at maritime interest. If by none of these ways he can raise money, he may exceed the general scope of this authority, as master, and sell part of the cargo, or hypothecate the whole. (*Ibid.*) Abbot lays down these emphatic rules, founded on a series of undoubted authority: The disposal, by the master, of the cargo, is a matter that requires the utmost caution on his part. He should have in mind always, that it is his duty to convey it to the port of destination. This is the purpose for which it was intrusted to him, and this he should accomplish by every reasonable and practicable method. Every act that is not properly and strictly in furtherance of this duty, is an act for which both he and his owners may be made responsible. And the law does not recognise the authority of any tribunal or officer acting on his suggestion or at his instance, but will scrutinize their acts as well as his own. (Abbot on Ship, 241; 10, Wh. 411.)

It must be only in cases of unprovided necessity when the master is justified in making sale. The possession of the master is not such a possession as will entitle third persons to consider him as owner, or clothed with an authority to sell. (Hunter *vs.* Reusep et al. 10, East. 378.) In such cases the sale is deemed tortious, and not as devesting the owner's right to the property. (2 Liver. on Agen. 225 & 6.) These last authorities go conclusively to deny all validity to the alleged award and disposition of the property made to persons at Indian Key by the master of the North Carolina, and this, altho' the agreement made by the master, may have been voluntary and not by fraud or imposition. For where was the necessity, or even the propriety of this transfer? Was he so far removed from his owners as to be unable to consult them without unreasonable or ruinous delay? The fact was otherwise. There was a mail once a fortnight from the island to Charleston. Had he tried to raise

money by drafts on his owners at Key West, if he failed at Indian Key? He was within ten hours' sail of Key West. There is no proof of either. But where was the necessity, at all, of raising money? His vessel wanted no repairs. He was not compelled to adjust and pay the salvage, but might have left the salvor with the 115 bales to prosecute his claim according to law; he, in the mean time, proceeding to Charleston with the residue of his cargo, to a larger amount than he afterwards carried away. But Houseman says he advised him to proceed to Charleston, but he would not. It is impossible to reconcile the conduct of this master with the principles of common honesty and common sense, and the utter destitution of the latter quality imputed to him is so much the more surprising than the want of honesty would be, that the mind is reluctantly driven to ascribe his conduct to a corrupt motive. In the view of the case presented by the facts and law, as above quoted, it is not very material as to the mere question of property, whether the claimant acted ignorantly, tho' with good faith, or not. The defect of authority in the master would invalidate the transfer, and vest in the assignee no title ag't the original owner. But did this claimant acquire this property ignorantly or "bona fide?" Let his conduct before and since the institution of this libel answer this question. He was covertly a partner in the wrecking business with the ostensible salvor, Smith. In the technical language of the wreckers, he was "consorted" with Smith and Packen, and was entitled to an equal interest in the salvage earned by their vessels. This is the import of the term used by witnesses. The fact is proved by his agent, Brown, and by Johnson and Adams. And yet, concealing this fact, he accepts the consignment of his vessel and undertakes to advise the master in the management of this question of salvage. Assuming an office which should place him as antagonist to the salvors in their claim of salvage, he is secretly the partner of these salvors in their claim. His clerk and dependant act as arbitrator and appraiser, awards the amount of salvage and appraises the property to be paid in kind—and such an appraisement! Cotton valued at $20 per bale, which had just cost $36, and soon after, sold at Charleston for upwards of $50! and for this service to the owners of the cargo he charges his commission as consignee, but only the usual mercantile commission! Then, how does he act when the owner claims his property in the court below? Does he then come forward as an honest purchaser, avowing the facts of his purchase and justifying the transaction? or does he claim as he should have done, as a salvor, and stating the grounds of his claim? He does neither. In his claim, put in under oath, he admits, he avows nothing. He rests his claim upon the mere possession and property, without explaining the origin of either. "He does not admit that the seventy bales belonged to the cargo of the North Carolina." Nay, he swears that "the said Joseph and Charles Lawton are not the owners of any cotton in this respondent's possession; and he answers further, and says, that he does not know of his own knowledge, that the said Joseph and Charles were ever the owners of any cotton in this respondent's possession at the time of the filing of the libel aforesaid, or that was attached in pursuance of the filing thereof."

Now can it be possible that this man who was the consignee and adviser of Capt. McIntyre, who must have witnessed the whole proceeding, who must have seen the bills of lading, could have been ignorant that the Lawtons were original part owners and consignees of this cotton? If he knew the fact then, his claim, under oath, was altogether evasive.

After the trial below, and when the facts of his "*consorting*" in this concern, or partnership, with Smith became known, he defends his claim in this court on the grounds of salvage. Then he prefers a direct claim for salvage. His answers to his claim in this court are not sworn to as they should have been, but if examined they will be found to be equally evasive and untrue, with his claim below. In his claim, in this court, he expressly asserts that he was an innocent purchaser for a valuable consideration, *without* "*notice of the claim of any third person whatever.*"

How can this averment be reconciled with the facts of the case? It is obvious that such a claimant, thus acting and doing in court and out of court, can receive no countenance from a tribunal governed by the principles of a court of admiralty, and in a case of salvage. In such cases the most fair, open, and meritorious conduct throughout can alone entitle those claims to consideration. If such conduct be required by all persons, even from those by accident thrown into the position of salvors, much more strictness and propriety of conduct should be exacted from those who, as licensed wreckers, make it their regular business. All fraudulent concealment, collusive practices, and imposition, should be visited with a forfeiture of salvage.

The 2d section of the act of Congress, approved Nov. 3d, 1825, (3 Story's, 2, 2012,) directs "that all property of every description whatever, taken from any wreck of the sea, or from any of the keys and shoals within the jurisdiction of the United States, or the coast of Florida, shall be brought to some port of entry within the jurisdiction aforesaid." In direct contravention of this law, the cotton is taken into a small, remote, and at that time a very obscure island or key, the abode only of consorted wreckers, and of those subject to their influence and control, and there a tortious conversion of the property is accomplished. When the interposition of the court of admirality is invoked, the party possessed of property studiously withholds all the facts from the knowledge of the court, relies wholly on his possession, and excepts to the jurisdiction of the court. Can he, after the facts are discovered, be permitted to assume the character of a meritorious salvor, and appeal to the liberal discretion of the court for compensation? We hold that he cannot expect a favorable hearing in such a case. In the case of the Blariem, 2 Cranch, 240, Chief Justice Marshal holds the following language: "If a wise and humane policy be among the essential principles which induce a continuance in the allowance of that liberal compensation which is made for saving a vessel at sea, we must at once perceive the ground on which it is refused to the person whose conduct ought to be punished instead of being rewarded. The same policy which is influential in producing the very liberal allowance made by way of salvage, requires that these allowances should be withheld from persons who avail themselves of the opportunity furnished by the possession of the property of another to embezzle that property."

The same court in the case of the Belle Commerce, (6 Wh. 152,) use this language: "As to the claims of the salvors it may be remarked, that maritime courts always approach them with benignity and favour, yet in proportion to the inclination of favour, when there is merit, is the indignation with *with* which they view every indication of a disposition to take advantage of the unfortunate spoliation, and even gross neglect may forfeit all pretensions of salvors to remuneration."

Now, it is true, the conduct of Houseman may not have been technically an "embezzlement," in the sense above used, but was it much less reprehensible and injurious? Through the instrumentality of a weak or corrupt man vested with no competent authority in the premises, he effects the conversion of the property of absent owners to his own use, and then studiously conceals the transaction from the knowledge of all concerned. In the argument of the cause the claim of Houseman, in this court, was regarded and treated as an application to this court, for a reasonable salvage to him as a meritorious salvor, independently of his claim to the property on the ground of the alleged assignment by the master, and of the effect of the award, at Indian Key. On inspection of the claim, however, such does not seem to be its import and effect; for, throughout, in both counts it vests the claim upon the proceedings had at Indian Key. And how could it be otherwise? In none of his answers and claims (tho' repeatedly and expressly charged as a latent partner with Smith, and "consorted" in the transaction) does he admit the fact. He does not profess to act for Smith and the avowed salvors, produces no authority from them, but claims simply as a "bona fide" purchaser for a valuable consideration. But in whatever form, or under whatever name the claim be now presented in this court, it must be rejected without hesitation.

These facts and principles sufficiently indicate the decree which this court is prepared to pronounce in the premises. It holds that there has been a tortious conversion of 122 bales of cotton, the property of libellants, by respondent, and that by the submission of this case to this court, and the issues joined before it, it is competent for the court to afford an adequate measure of redress.

We are not inclined to award vindictive damages in this case, conceiving that the forfeiture of salvage, and the loss incurred by respondent in his purchase from his partners and in this prosecution of this suit, will be a sufficient admonition against the recurrence to similar practices. But in awarding adequate redress to the libellant, we follow the rule adopted by the Supreme Court of the United States, in the case of the Amiable Nancy, 2 Wheaton, 327. In that case the court lay it down as a rule that the prime cost or value of the property lost at the time of the loss, with interest, affords the true measure of redress. In ascertaining the weight of the 122 bales lost, we take the testimony of Porter and Naylor, both of whom concur in stating the average weight of the bales at between 369 and 370.

For the value we adopt the price at which Houseman actually sold 57 bales of this cotton at Charleston, (the nearest good market,) viz: 13¾ cents, deducting the fractions of the cent as an allowance for freight, with which the cotton would have been chargeable. Interest at the rate of 8

per cent. to be allowed from the arrival of the North Carolina, at Charleston, (assuming as that date the application for the survey, by Captain McIntyre, as it appears on the record,) and to be computed to the day of rendering this decree. To this will be added the sum of $500 for counsel fees, which is deemed a just and reasonable allowance, in addition to the costs. The result of this rule, as applied to the facts of the case, will stand thus:

122 bales, each 369lbs.—45018lbs., which, at 13 cts. -	$5851 34
Interest thereon from 22d March, 1833, to January 7, 1838, at 8 per cent. - - - - - -	2,268 53
Counsel fees - - - - - -	500 00
	$8,619 87

Amounting, in the whole, to the sum of eight thousand six hundred and nineteen dollars and 87 cents, and costs.

Decree.

It is therefore ordered, adjudged, and decreed, that the claim of Jacob Houseman, preferred in this court for salvage, be dismissed with costs, and this court, proceeding to make such other and further decree as is right and proper on the supplemental libel and answer filed by the said parties in this court, do assess the damages sustained by said libellant, for the taking and conversion of the whole amount of the one hundred and twenty-two bales of cotton, the property of said libellants, by the respondent Houseman, and expenses at the sum of eight thousand six hundred and nineteen dollars and eighty-seven cents, and that the said libellant have execution from this court, for the same, against said Jacob Houseman.

And it is further ordered, adjudged, and decreed, that the decree of the superior court of the southern district be confirmed, and that the stipulation entered into in that court stand good for such amount of the foregoing damages as it will cover, and that libellant recover his costs, &c.

January 29, 1838.

[See entry G at end of record.]

Bill of Costs.

JACOB HOUSEMAN
vs.
CARGO OF SCHOONER NORTH CAROLINA, &c. } Bill of Costs.

Clerk L.—Docketing cause, 16⅔; entering appearance, 16⅔; filing record, 16⅔; filing 28 papers, 4 63; copy of answers, 2 24; certificate to same, 33⅓; issuing 3 commissions to take testimony, at $2 per com., 6 00; entering order to take further proof, 33⅓; entering order to file answer, 33⅓. - $14 37

Clerk D.—Filing 5 papers, 83⅓; [filing 5 papers, 83⅓;] copies of papers annexed to deposition of Fletcher, with seal and certif., 2 66⅔; copy of decree of court below with certif., 4 20; entering order to withdraw papers, 33⅓; entering order for continuance, 33⅓; setting case for trial, 33⅓; entering 10 orders, 3 33⅓; entering final judgment, 1 33⅓; citation of appeal, 66⅔; taking bond, 1 33⅓; taxing costs, 1 33⅓. - - - - - - - - 15 04⅔

$29 41⅔

Copies of papers, postage, and pay to comm'rs, amount to - 71 43½

Appeal Bond.

Know all men by these presents, that we, Jacob Houseman, of Indian Key, merchant, Fielding A. Brown, of Indian Key, also merchant, and Lemuel Otis, of Indian Key, gentlemen, and all of the Territory of Florida, are held and firmly bound unto Joseph Lawton and Charles Lawton, of Charleston, in the State of South Carolina, merchants, trading and negotiating under the firm and style of J. & C. Lawton, in the sum of eighteen tbonsand dollars, lawful money of the United States of America, to be paid to the said Joseph Lawton and Charles Lawton, or the survivor of them, or their certain attorney or assigns, or the attorney, heirs, executors, administrators, or assigns of such survivor. For which payment well and truly to be made, we bind ourselves jointly and severally, and our, and each of our, heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this tenth day of March, one thousand eight hundred and thirty-eight:

Whereas, Jacob Houseman hath, in a cause lately depending in the court of appeals in Florida, in which he, the said Jacob Houseman, was appellant, and J. & C. Lawton, by their agent Oliver O'Hara, were appellees, about certain bales of cotton taken from the schooner North Carolina, appealed to the Supreme Court of the United States, from the final decree of said court of appeals; and on granting the said appeal by the said court of appeals, the said Jacob Houseman, with security to be approved of by the jndge of the southern judicial district, was ordered to file a bond in the penalty of eighteen thousand dollars, payable to the said J. & C. Lawton, conditioned to prosecute his appeal with effect, and pay all damages and costs, which, if he fail upon his said appeal, shall be decreed against him.

Now the consideration of this obligation is such, that if the above bounden, Jacob Houseman, shall well and truly prosecute to effect the appeal he has made from the final decree of the court of appeals in the Territory of Florida, to the Supreme Court of the United States, in which the said Jacob Houseman is appellant, and J. & C. Lawton, by Oliver O'Hara, their agent, are appellees, pay all such damages and costs, if he shall fail in such appeal, as shall be decreed against him, then this obligation to be void; otherwise to be and remain in full force and virtue.

JACOB HOUSEMAN, [L. S.]
F. A. BROWNE, [L. S.]
LEMUEL OTIS. [L. S.]

Sealed and delivered in presence of
G. W. SOMARNDY, Clk.
J. B. BROWNE.

The securities, F. A. Browne and Lemuel Otis, to the foregoing bond of Jacob Houseman, are approved.

Given under my hand this 5th April, 1838.

JAMES WEBB,
Judge Southern District Florida.

Filed 29th April, 1838.

A.

15th January, 1838.

JACOB HOUSEMAN, et al., *Appellants*,
against
The cargo of Schr. North Carolina, *Appellees*.
} Upon an appeal from a decree in Admiralty, Southern District.

This day came the parties by their counsel, and the appellants move the court to reject the depositions of Naylor and Tyler filed in this cause, on the ground that the same were improperly and illegally taken, which motion, after argument, the court overruled. And thereupon this cause was partly heard upon the transcript of the record of the appeal aforesaid, and is continued until to-morrow for a further hearing thereof.

B.

16th January, 1838.

JACOB HOUSEMAN, et al. *Appellant*,
against
The cargo of the Schr. North Carolina, &c., *Appellees*.
} Upon an Appeal from a Decree in Admiralty, Southern District.

This cause was this day still further heard upon the transcript of the record of the appeal aforesaid, and is continued until to-morrow for a further hearing thereof.

C

January 17th, 1838.

JACOB HOUSEMAN, *Appellant*,
against
The cargo of the Schr. North Carolina, &c., *Appellees*.
} Upon an appeal from a Decree in Admiralty, Southern District.

This cause was this day still further heard upon the transcript of the record of the appeal aforesaid, and is continued until to-morrow for a further hearing thereof.

D.

18th January, 1838.

The presiding judge being this day unavoidably absent, it is ordered that the court be adjourned until to-morrow morning at half-past ten o'clock.

E.

January 19th, 1838.

JACOB HOUSEMAN, et al., *Appellant*, *against* The cargo of the Schr. North Carolina, &c., *Appellees*. } Upon an appeal from a Decree in Admiralty, Southern District.

This cause was this day fully argued upon the transcript of the record of the appeal aforesaid and arguments of counsel, but because the court is not yet advised of its judgment to be given in the premises, time is taken to consider thereof.

F.

January 29th, 1838.

JACOB HOUSEMAN, *Appellant*, *against* The cargo of the Schr. North Carolina, *Appellees*. } Upon an Appeal from a Decree in Admiralty of the Superior Court of Monroe County, Southern District of Florida.

Whereby it was considered that the appellant should make restitution of certain cotton claimed by him to the libellant, Oliver O'Hara, agent of Messrs. J. & C. Lawton, merchants of Charleston, South Carolina, said decree being rendered on the 14th day of September, 1833.

This day came the parties by their counsel, and the court having maturely considered the transcript of the record of the decree aforesaid, and the arguments of counsel, doth order, adjudge and decree, that the claim of Jacob Houseman, preferred in this court for salvage, be dismissed with costs; and this court, proceeding to make such further and other decree as is right and proper on the supplemental libel and answer filed by the said parties in this court, do assess the damages sustained by said libellant, for the taking and conversion of the whole amount of one hundred and twenty-two bales of cotton, the property of said libellant, by the respondent, Jacob Houseman, and the expenses, at the sum of eight thousand six hundred and nineteen dollars and eighty-seven cents, and that the said libellant have execution from this court for the same against the said Jacob Houseman.

And it is further ordered, adjudged and decreed, that the decree of the s perior court for the southern district be confirmed, and that the stipula-